

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

74-1901

B
P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1901

UNITED STATES OF AMERICA,

Appellee,

—v.—

KARL SCHWARTZBAUM,

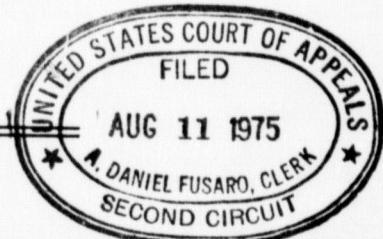
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

Volume III—Pages A-147 to A-297

GOLDSTEIN, SHAMES & HYDE
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New York, New York 10021
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PAGINATION AS IN ORIGINAL COPY

Reply Affidavit of Edward Brodsky, Esq. (November 11, 1974)	A. 248
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DOCKET ENTRIES

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT
JUDGE PIERCE

73 GRN. 313

12 STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	6/16/74	Henry - 500	500	-
J.S. 3 mailed 1-2-4-3	Marshal	6/16/74	(Rec'd in full)	300	-
Violation	Docket fee	6/16/74	Robert - 5	5	-
Title 29		6/17/74	Robert - 200	200	-
Sec. 186(a) unlawful payments (under Taft-Hartley Act) by employers to Union Representatives		6/19/74	(Rec'd in full) Robert - 1000	1000	-

THIRTEEN COUNTS

DATE	PROCEEDINGS
6-21-73	Filed Indictment assigned to Judge Pierce as a related matter (73 Cr. 257)
6-28-73	All Defts. (attys. present) Plead not guilty. Released on thier own recognition. Pierce, J.
2-1-74	SAM SHERMAN= Filed Deft's Notice of Motion And Affidavit of Atty Davit Maltin and Memorandum of Law in Support of Motion for Severance.
2-6-74	SOL COHEN= Filed Deft's Memorandum of Law in support of Motion for Severance and Deft's Notice of Motion to Sever and Affidavit.
2-6-74	KARL "JACK" SCHWARTZBAUM= Filed Deft's Memorandum of Law in support of Motion of Severance and Deft's Notice of Motion to Sever and Affidavit.
1-29-74	HARRY HESSEL= Filed Gov't Affidavit in Opposition to Defts motion for a bill of particulars and discovery filed 5-14-73 to the predecessor indictment 73 Cr. 257

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DATE	PROCEEDINGS
3-13-74	HARRY HESSEL- Filed Daft'd Notice of Motion to Sever and Affdvt of deft's Atty requesting motion be granted.
3-13-74	PTC held all four (4) deft's motions for severance is granted. Each Daft will be tried separately, beginning with HESSEL on 3-25-74 at 9:30. Daft COHEN to follow immediately, then SHERMAN and finally SCHWARTZBAUM. — PIERCE, J.
3-18-74	HARRY HESSEL- Hearing held with Daft and his Atty Abraham Werfel present. Atty Werfel is relieved as Atty for Daft, and Robert J. McGuire is substituted —PIERCE, J.
3-22-74	SAM SHERMAN- Daft, with his Atty present, withdraws his plea of NOT GUILTY and pleads GUILTY to Count One (1) only. Daft waives pre-sentence report and is to be sentenced this day. Sentence- Daft, atty present, is to pay a fine to U.S. in sum of \$5,000. on Count One (1). Fine is to be paid by April 9, 1974. On motion of Daft's counsel, open counts 2 & 3 are dismissed with the consent of the Govt.—PIERCE
3-25-74	SOL COHEN- Daft, atty present, withdraws his plea of NOT GUILTY and pleads GUILTY to Count 13, as changed. P.S.I. ordered. Sentence May 9, 1974 @ 4:30.
5-14-74 @ 4:30	HARRY HESSEL- Daft, his atty present. Robert J. McGuire, withdraws his plea of NOT GUILTY, and pleads GUILTY to Count 4. PSI ordered. Sentence
5-14-74 @ 4:30	PIERCE, J.
3-25-74	HARRY HESSEL- Filed Notice of Appearance of Atty MC GUIRRE & LAWIER, 14 East 69th Street, NYC, 10021 Tel#628-3302.
3-22-74	SAM SHERMAN- Filed Judgment(74-300) It Is Adjudged that the Daft pay a fine to the United States in the sum of FIVE THOUSAND (\$5,000.) DOLLARS on Count 1. Fine is to be paid by the Daft on or before April 9, 1974. The Daft is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law. The order that the Daft stand committed is stayed until April 9, 1974. Counts 2 and 3 are dismissed on motion of daft's counsel with the consent of the Govt.—PIERCE, J.
4-1-74	KARL "JACK" SCHWARTZBAUM- Jury Trial begun as to this Daft only.
4-2-74	" " " = Trial continued.
4-3-74	" " " = Trial continued. Gov'ts motion to dismiss Count 12 GRANTED.
4-4-74	" " " = Trial continued. Judge charges Jury. Jury begins deliberation
	Jury returns with a Verdict. Daft found GUILTY on each of Cts 9, 10, & 11. P.S.I. ordered. Sentence 5-6-74 @ 1:30 PM.
	Room #2804. Daft. cont'd R.O.R. —PIERCE, J.
4-5-74	KARL "JACK" SCHWARTZBAUM- Filed Affidavit, Order & Application, ordering that Harry Jaffee to testify and produce evidence at the trial herein —PIERCE, J.
4-10-74	SAM SHERMAN- Filed Daft's Notice of Motion to Reduce Sentence + Daft's Affidavit, in support of the motion.
4-26-74	KARL "JACK" SCHWARTZBAUM- Filed Notice of Motion and Affdvt of William Esbitt for an order setting aside the verdict against the Daft & granting a new trial.
4-26-74	KARL "JACK" SCHWARTZBAUM- Filed Memorandum of Law on behalf of Daft.

Continued

B

DATE	PROCEEDINGS
4-24-74	SAM SHERMAN - Filed Memo. End. on motion dated 4/10/74, reduce sentence Sentence of 3/22/74 is hereby STAYED until 5/31/74. So Ordered Pierce J. (mailed notice)
May 14, 74	KARL "JACK" SCHWARTZBAUM - Filed Memorandum Order The Court concludes that it would not serve the interest of justice to grant a new trial & accordingly the motion is denied. So Ordered Pierce J. (mailed notice)
5-21-74	KARL "JACK" SCHWARTZBAUM - Filed Notice of Motion & Affidavit in support. Re: Set aside the verdict & new trial of new discovered evidence. ret. 5/29/74.
5-21-74	KARL "JACK" SCHWARTZBAUM - Filed Memorandum of Law in support of deft's. motion for a new trial on the ground of newly discovered evidence.
5-15-74	HARRY HESSEL - Filed Judgment (#74-570) (Atty Present) It is Adjudged that the deft. is guilty as charged & that the deft. pay a fine to the U.S. in the sum of Three Thousand (\$3,000) Dollars on count 4. The deft. is ordered to stand committed until fine is paid or he is otherwise discharged by due course of law. The order that the deft. stand committed is Stayed until 6/14/74 at 5PM. Counts Five thru Eight are dismissed on motion of deft's. counsel with the consent of Gov't. Pierce
5-24-74	SOL COHEN - Filed Judgment (# 74-460) (Atty Present) It is Adjudged that the deft. pay a fine to the US in the sum of One Thousand (\$1,000) Dollars on count 13. The deft. is ordered to stand committed until fine is paid or he is otherwise discharged by due course of law. The order that the deft. stand committed is STAYED until 8/26/74. Pierce J.
6-11-74	KARL "JACK" SCHWARTZBAUM - Filed notice of appeal from the denial of deft's. motions to set aside the verdict and granting a new trial and from the final judgment. Mailed notice to Karl "Jack" Schwartzbaum, 5 Grenwolde Drive, Kings Point, N.Y., U.S. Atty.
6-4-74	KARL "JACK" SCHWARTZBAUM - Filed JUDGMENT (# 74-502) (Atty Present) It is adjudged that the deft. pay a fine to the United States in the sum of ONE THOUSAND (\$1,000) DOLLARS on each of counts 9, 10 and 11. Total fine of THREE-THOUSAND (\$3,000) DOLLARS is to be paid or deft. is ordered to stand committed until fine is paid or he is otherwise discharged by due course of law. The order that the deft. stand committed is stayed until July 8, 1974. PIERCE, J.
6-13-74	SAM SHERMAN-Filed memo, endorsement on deft's. motion filed 4-10-74, The motion is granted, to the following extent, Petitioner's fine shall be reduced to \$2,000. Execution of the sentence is stayed until July 2, 1974. So Ordered... PIERCE, J. (mailed notice)
6-10-74	SAM SHERMAN-Filed AMENDED JUDGMENT(#) The deft. pay a fine to the U.S. in the sum of TWO THOUSAND (\$2,000)DOLLARS on ct. 1. Deft. is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law. The order that the deft. stand committed is stayed until July 2, 1974.....Pierce, J.
6-26-74	SAM SHERMAN-Filed deft's. memorandum of law in support of motion for severance.

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73 Cr.

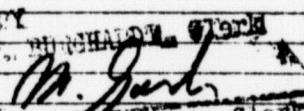
DATE	PROCEEDINGS
6-27-74	KARL JACK SCHWARTZBAUM-Filed Memo Endorsement on deft's. notice of motion filed on 5-21-74. Deft's. motion for a new trial is denied....So Orderad....PIERCE,J. (mn)
7-1-74	KARL "JACK" SCHWARTZBAUM-Filed envelope sealed by order of the Court, dtd 7-1-74,Pierce,J. (Placed in vault in Room 602).
6-28-74	KARL "JACK" SCHWARTZBAUM-Filed notice of certification and transmittal of record on appeal to the U.S.C.A. for the 2nd Circuit.
7-1-74	KARL "JACK" SCHWARTZBAUM-Filed ORDER that deft's time to pay the fine imposed by this Court is suspended pending the determination of the appeal now pending in the U.S.C.A. for the 2nd Circuit....Pierce,J. (mailed notice)
7-8-74	HARRY HESSEL-Judgment #74.570--Fine marked satisfied and entered in money judgment book.
7-10-74	KARL "JACK" SCHWARTZBAUM-Filed notice of certification of record on appeal.
7-12-74	ALL DEFTS.- Filed transcript of record of proceedings dated March 13, 1974.
7-12-74	SAM SHERMAN-Filed transcript of record of proceedings dated March 22, 1974.
7-12-74	KARL "JACK" SCHWARTZBAUM-Filed transcript of record of proceedings dated April 1, 1974.
7-12-74	KARL "JACK" SCHWARTZBAUM-Filed transcript of record of proceedings dated April 4, 1974.
7-16-74	HARRY HESSEL and SOL COHEN-Filed transcript of record of proceedings dated March 25, 1974.
7-10-74	Filed transcript of record of proceedings dated JUNE 4-74.
7-23-74	KARL JACK SCHWARTZBAUM-Filed Gov't memorandum in opposition to deft's motion for New Trial dated April 1, 1974.
7-10-74	Filed transcript of record of proceedings dated March 22, 1974.
7-15-74	Filed transcript of record of proceedings dated June 28, 1974.
8-9-74	Filed affdvt of V.T.Fryman in opposition to deft's Karl Jack Schwartzbaum motion to set aside verdict.
8-9-74	KARL JACK SCHWARTZBAUM-Filed Gov't memorandum in opposition deft's motion for New Trial.
8-9-74	KARL JACK SCHWARTZBAUM-Filed Gov't affdvt in opposition to deft's motion for New Trial.
8-9-74	KARL JACK SCHWARTZBAUM-Filed Gov't affdvt in opposition to deft's motion for New Trial.
8-9-74	KARL JACK SCHWARTZBAUM-Filed Gov't evidentiary memorandum #1.
8-9-74	KARL JACK SCHWARTZBAUM-Filed Gov't supplemental request to charge.
8-9-74	KARL JACK SCHWARTZBAUM-Filed Gov't requests to charge.
8-9-74	KARL JACK SCHWARTZBAUM-Filed deft's objections to Gov't request to charge.
8-9-74	KARL JACK SCHWARTZBAUM-Filed deft's requests to charge.
8-9-74	KARL JACK SCHWARTZBAUM Filed deft's request for Voir Dire.
	Cont'd Page #5.

DATE

PROCEEDINGS

8-9-74	KARL JACK SCHWARTZBAUM-Filed deft's memorandum Re: Cross examination of Glasser.
8-9-74	KARL JACK SCHWARTZBAUM-Filed Gov't proposed questions on voir dire.
8-9-74	KARL JACK SCHWARTZBAUM-Filed deft's reply affdvt kto affdvt of Mr. Fryman & Mr. Sabetta
8-9-74	KARL JACK SCHWARTZBAUM-Filed Govt's memorandum in opposition to deft's motion for a New Trial.
8-28-74	SOL COHEN-Judgment #74-460-Fine marked satisfied and entered in money judgment book.
10-9-74	KARL SCHWARTZBAUM-Filed Deft's. affidavit and notice of motion for an order setting aside the verdict and granting a new trial, Ret. 10-18-74.
10-23-74	KARL "JACK" SCHWARTZBAUM-Filed Stip. & Order extending Government's, time to file papers in opposition to Deft's, motion for new trial until 10-25-74,Pierce,J.
10-30-74	KARL "JACK" SCHWARTZBAUM-Filed Stip. & Order extending deft's. time to file additional papers in support of his motion for a new trial until 11-6-74,.....Pierce, (Filed in 73 Cr. 614).
11-11-74	KARL SCHWARTZBAUM-Filed deft's, reply affidavit in support of motion for a new trial.
11-19-74	KARL "JACK" SCHWARTZBAUM-Filed Stip. and Order extending deft's. time to file additional papers in support of his motion for a new trial until 11-11-74,Pierce,J. (Filed in 73 Cr. 614).
12-2-74	KARL "JACK" SCHWARTZBAUM-Filed deft's. affidavit & notice of motion for an order permitting examination of all orders convening grand juries in the S.D.N.Y. during the period from 1-1-69 to date, ret. 12-16-74.
12-23-74	KARL "JACK" SCHWARTZBAUM-Filed MEMO ENDORSED on deft's. motion filed 12-2-74 to examine all orders convening grand juries. The motion herein is hereby granted. Submit order on two days notice. SO ORDERED.....Pierce,J. (mailed notice) (Filed in 73 Cr. 614).
1-2-75	KARL "JACK" SCHWARTZBAUM-Filed ORDER that deft's. motion to examine all orders convening grand juries is granted. The Clerk of the Court is directed to permit deft's. counsel to examine all orders convening regular and special grand juries in the S.D. of N.Y. during the period from 1-1-69 through and including the date hereof.....,Pierce,J. (mailed notice)(Filed in 73Cr.614)
1-27-75	KARL "JACK" SCHWARTZBAUM-Filed deft's, affidavit & notice of motion for an order dismissing the indictment, ret, 2-5-75, (filed in 73 Cr. 614).
2-6-75	KARL "JACK" SCHWARTZBAUM-Filed STIP & ORDER that Govt's. time to file opposition to deft's. motion to dismiss is extended until 2-12-75 and deft's. time to reply until 2-19-75. SO ORDERED (Final against all parties)....Pierce,J. (Filed in 73 Cr. 614)
Feb 18-75	Filed Government's memorandum in opposition to defts' motions to dismiss based on alleged irregularity of Grand Jury Proceedings
Feb 18-75	Filed affdvt of John C. Sabetta in opposition to defts' motion to dismiss.

E

DATE	PROCEEDINGS
2-18-75	Filed letter dated 2-13-75 from U.S. Attorney addressed to Judge Pierce. (Filed in 73 Cr. 614)
2-19-75	KARL "JACK" SCHWARTZBAUM-Filed deft's. memorandum of law in reply to Govt's. objection to motion to dismiss the indictments.
4-2-75	KARL "JACK" SCHWARTZBAUM-Filed deft's. affidavit & notice of motion for an order dismissing the indictment. (Original filed in 73 Cr. 614)
4-2-75	KARL "JACK" SCHWARTZBAUM-Filed deft's. memorandum of law in support of motion to dismiss. (Original filed in 73 Cr. 614)
4-17-75	KARL "JACK" SCHWARTZBAUM-Filed STIP. & ORDER extending Govt's. time to file opposition to deft's. motion to dismiss the indictment, to 4-18-75.....Pierce,J. (Filed in 73 Cr. 614)
4-21-75	KARL "JACK" SCHWARTZBAUM-Filed Govt's. memorandum of law in opposition to deft's. motion to dismiss the indictment. (Original filed in 73 Cr. 614).
6-5-75	KARL "JACK" SCHWARTZBAUM-Filed MEMO ENDORSED on deft's. motion to dismiss the indictment, filed 1-27-75. Motion denied.....Pierce,J. (mailed notice)(Filed in 73 Cr. 614)
6-5-75	KARL "JACK" SCHWARTZBAUM-Filed MEMO ENDORSED on deft's. motion to dismiss the indictment filed 4-2-75. Motion denied.....Pierce,J. (mailed notice) (Filed in 73 Cr. 614)
6-9-75	KARL "JACK" SCHWARTZBAUM-Filed Govt's. affidavit by Robert R. Maroncelli, Revenue Agent. (Filed in 73 Cr. 614)
6-9-75	KARL "JACK" SCHWARTZBAUM-Filed Govt's. affidavit in opposition to deft's. motion for a new trial. (Filed in 73 Cr. 614)
6-6-75	KARL "JACK" SCHWARTZBAUM-Filed MEMO ENDORSED on deft's. motion filed 10-9-74. The motion for a new trial and the alternative application for a hearing are denied.Pierce,J. (mailed notice)
7-15-75	KARL JACK SCHWARTZBAUM: Filed Affidavit in support of a motion pursuant to Rule 4 (b) of the Federal Rules of Appellate Procedure, for an order enlarging the deft's time to appeal from the orders of this Court etc., as indicated.
7-15-75	KARL SCHWARTZBAUM - Filed Notice of Appeal from order dtd. 6-5-75 & Order dtd. 6-4-75 denying deft's. motions for renewal for a new trial & to dismiss indictment. (mailed notice)
	FBI - NEW YORK M. Jank Deputy Clerk 

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LETTER OF JOHN C. SABETTA
(September 3, 1974)

JCS

73-0753

September 3, 1974

Elkan Abramowitz, Esq.
Weiss Rosenthal Heller & Schwartzman
295 Madison Avenue
New York, New York 10017

Re: United States v. George Stofsky, et al.
United States v. Karl "Jack" Schwartzbaum

Dear Mr. Abramowitz:

In connection with our continuing investigation of the fur industry we have obtained copies of financial records of Jack and Betty Glasser from the following institutions: Chemical Bank, Dollar Savings Bank of New York, E. Lowitz & Co., The East New York Savings Bank, Emigrant Savings Bank, First Federal Savings and Loan Association of New York, and the Greenwich Savings Bank. These records are available at our offices for inspection by counsel for defendants in the Stofsky or Schwartzbaum proceedings. If you or any of the other counsel desire to review these materials, they will be available in the office of Assistant United States Attorney S. Andrew Schaffer.

In our interviews with Mr. Glasser in May 1974, he identified 1964 as the year he first accepted money from a fur manufacturer to arrange a payoff to a union official. In a recent interview with Mr. Glasser he recalled that the first payment from that previously identified group of manufacturers occurred in 1962. Also at that more recent interview Mr. Glasser estimated that Mrs. Glasser had inherited \$30,000 to \$40,000 in jewelry and other assets including cash and bonds from her parents. He was not able to specify how much of that inheritance was included in their savings accounts as of 1972. The estimate by Mr. Glasser dur-

Elkan Abramowitz, Esq. -2- September 3, 1974

ing the May interviews that \$40,000 to \$50,000 from Mrs. Glasser's parents was included in the savings accounts in 1972 appears to be high and incorrect.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: John C. Sabetta
JOHN C. SABETTA
Assistant United States Attorney
Tel.: (212) 264-6423

cc: Paul K. Rooney, Esq.
Messrs. Rooney & Evans
521 Fifth Avenue
New York, New York 10017

Stephen Barasch, Esq.
27 East 39th Street
New York, New York 10016

Edward Brodsky, Esq.
Messrs. Goldstein, Shames & Hyde
655 Madison Avenue
New York, New York 10021

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NOTICE OF MOTION FOR A NEW TRIAL
(October 8, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
 UNITED STATES OF AMERICA, : 73 Cr. 616
 Plaintiff, : (L.W.P.)

-against-

KARL SCHWARTZBAUM,
 Defendant.

----- x
 S I R S :

NOTICE OF MOTION	
OFFICE COPY	
SERVED	BY MAIL 10/8/74
RECEIVED	
PRESENTED	10/9/74
COMPUTED	10/10/74
ENTRIES IN DIARY	10/10/74

PLEASE TAKE NOTICE, that upon the annexed affidavit of Edward Brodsky, sworn to the 8th day of October, 1974 and the exhibits annexed thereto, and upon all the pleadings and proceedings heretofore had herein, a motion will be made before the Honorable Lawrence W. Pierce, United States District Judge for the Southern District of New York, in Room 2804 of the United States Courthouse, Foley Square, New York, New York, on the 18th day of October, 1974, at 10:30 in the forenoon of that date or as soon thereafter as counsel may be heard, for an order pursuant to Rule 33 of the Federal Rules of Criminal Procedure and the Fifth Amendment to the United States Constitution, setting aside the verdict against the defendant and granting him a new

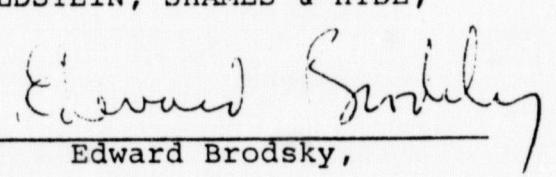
trial on the ground of newly-discovered evidence or, in the alternative, directing an evidentiary hearing on the issues raised by defendant's motion herein, and for such other and further relief as to the Court may seem proper and just.

Dated: New York, New York
October 8, 1974.

Yours, etc.,

GOLDSTEIN, SHAMES & HYDE,

By:


Edward Brodsky,

Attorneys for Defendant,
Karl Schwartzbaum,
Office & P. O. Address,
655 Madison Avenue,
New York, New York 10021,

(212) 838-3700

TO:

Paul J. Curran, Esq.,
United States Attorney,
Southern District of New York,
United States Courthouse,
Foley Square,
New York, New York 10007;

V. Thomas Fryman, Jr., Esq.,
Assistant United States Attorney,
Southern District of New York,
United States Courthouse,
Foley Square,
New York, New York 10007.

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AFFIDAVIT OF EDWARD BRODSKY, ESQ.
IN SUPPORT OF MOTION (OCTOBER 8, 1974)
AND EXHIBITS "A" AND "B" ANNEXED THERETO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x -----
UNITED STATES OF AMERICA, : 73 Cr. 616
 : (L.W.P.)
Plaintiff, :
-against- : AFFIDAVIT
KARL SCHWARTZBAUM, :
Defendant. :
----- x -----

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

EDWARD BRODSKY, being duly sworn, deposes
and says:

I am a member of the firm of Goldstein,
Shames & Hyde, counsel for the defendant Karl Schwartzbaum in
the above-captioned case. This affidavit is submitted in sup-
port of a motion on behalf of the defendant, pursuant to Rule 33
of the Federal Rules of Criminal Procedure and the Fifth Amend-
ment to the United States Constitution, for an order setting
aside the verdict against the defendant and granting him a new
trial on the ground of newly-discovered evidence. In the al-
ternative, it is requested that defendant be granted an evi-
dentiary hearing for the purpose of developing further facts
in support of this application.

This motion is being made now because the Government has recently made available to the defendant additional evidence which further establishes and enlarges upon the conceded perjurious trial testimony of the chief prosecution witness, Jack Glasser. The new evidence was provided to us by the Government sua sponte after the defendant's brief was filed with the Court of Appeals and before the Government's brief was due. By order of the Court of Appeals, with the consent of the Government, the proceedings in the Court of Appeals have been stayed pending this motion (see Exhibit "A" annexed hereto).

Background

On April 4, 1974, the defendant was convicted of violating the Taft-Hartley Act, 29 U.S.C. § 186, after a jury trial before this Court. The charge was that, commencing with "the first third of 1969" and ending with "the first third of 1970", Mr. Schwartzbaum, being an employer in the fur industry, made four payments of \$150.00 each to Charles Hoff, an officer of the Furriers Joint Council, a labor organization which represented the employees of Schwartzbaum's company. Each such payment was alleged to have been a violation of 29 U.S.C § 186(a). The defendant was found guilty of three counts of the indictment. The fourth count was dismissed by the Court because of insufficiency of proof.

The key witness at the trial was Jack Glasser, who was not a labor official. Glasser was a labor adjuster employed by the Association of Fur Manufacturers, an employers' organization. The key issue in the case was Glasser's credibility. Had the jury disbelieved Glasser's testimony, there would have been no conviction.

Glasser's testimony, elicited by the Government under a grant of complete immunity, was as follows:

- (i) That he was paid \$150.00 on four separate occasions by Mr. Schwartzbaum, of which he gave one-half to Charles Hoff, a labor official who is named in the indictment as the recipient of the money but did not testify in this case;
- (ii) That he also received money from five other manufacturers, and only five other manufacturers.

At the trial, it was demonstrated that Glasser either had an extremely poor recollection or he was lying. For example, he changed his testimony about material facts (Tr. 186)*.

*The citations herein refer to the appellant's Appendix filed in the Court of Appeals, which includes the various documents relevant to the appeal, as well as the entire trial transcript. The transcript, its original pagination and citations to it herein are preceded by "Tr.". Citations to the other documents are preceded by "A.".

He acknowledged that in prior testimony he left out material facts on the ground that "it must have slipped my memory" (Tr. 185). He withdrew from a claim that he made that money was being paid to Charles Hoff, a union official, and reinstated that claim after the prosecutor showed him a memorandum which the prosecutor had prepared of an interview with Glasser (Tr. 191-200, 222-228).

At the trial, as stated above, Glasser unequivocally testified that he received other payments from only five other manufacturers. His share of the total payments of \$14,000 (A. 50,76), according to his testimony, was \$5,043 (A. 49-50).

Before the trial of the instant case, certain union officials were tried and Glasser also was the key witness against them (73 Cr. 614). At the trial of the union officials, counsel for the defendants had subpoenaed bank records which led to the disclosure that Glasser had financial assets in excess of one hundred thousand dollars. Glasser explained at that trial that the bulk of his resources was derived from an inheritance which had been received by his wife. Although an examination of Surrogate's Court records cast doubt upon that assertion, counsel at the prior trial was unable to develop anything of value from these disclosures. As it turned out, the bank's response to the subpoenas had not produced those records which would have revealed to counsel that, during the three and a half year period

covered by this indictment, Glasser had made large and frequent cash deposits to his various bank accounts (A. 114-5, 118-20).

At the instant trial, Glasser testified that his net salary during the period covered by the indictment was \$174.00 per week (Tr. 150). He further testified that he did not receive cash gifts from other fur manufacturers (Tr. 151). Efforts to ascertain whether he was a gambler were met with an unequivocal denial. Indeed, Glasser denied that he had ever been to the racetrack (Tr. 153).

Following the instant trial (A. 45), defense counsel learned about the bank records which revealed Glasser's cash deposits. Those records established that, during the three and a half year period covered by the indictment, Glasser's total cash deposits amounted to \$56,701.05 (A. 76). That disclosure prompted both the defendant herein and the defendants in the Stofsky case to make a motion for a new trial grounded upon newly-discovered evidence (A. 44-76, 107). In response to the motions, the Government interviewed Glasser and his wife (A. 79). At first, they claimed that the cash deposits resulted from a sale of Mrs. Glasser's jewelry (A. 116-7); however, Glasser eventually admitted that approximately half of the almost \$57,000 in deposits were the proceeds of payments made by other fur manufacturers. He claimed that the balance of the cash deposits resulted from various legitimate transactions, including the sale of his wife's

jewelry, Christmas and vacation gifts from manufacturers, and miscellaneous commissions (A. 79-82). No documentation appears to have been produced with regard to these latter alleged sources of income (A. 77, et seq.). He also admitted that he had gambled in a casino in Puerto Rico and, contrary to his unequivocal testimony at the present trial, he had been to racetracks on various occasions (A. 83-7).

The Government incorporated all of the above admissions of perjury and other information into a reply affidavit executed by Government counsel (A. 77, et seq.). In addition, the Government filed with the Court a document allegedly detailing the facts concerning Glasser's payments from other manufacturers. The defense was not provided with a copy of the latter document and, at the request of the Government, the Court placed it under seal (A. 116-7). The Government did not include in its reply any affidavit executed by Glasser with regard to the newly-discovered evidence. Likewise, no documentation was produced with regard to Glasser's claim that a part of his cash deposits was derived from legitimate sources, nor did the Government's response indicate whether Glasser was questioned with regard to what percentage, if any, of the payments he received was expended by him rather than deposited in the bank.

Instead, the Government chose to paraphrase a series of patently incredible explanations, allegedly offered to Government counsel by Glasser and his wife, for the concededly false testimony (A. 80-3).

Based upon newly-discovered evidence, a motion for a new trial was made on behalf of defendant Schwartzbaum. That motion was denied by this Court, as was a motion for a new trial made on behalf of the union officials. In denying the motion of the union officials, the Court said that demonstrating that Glasser was involved in a more substantial fraud with more manufacturers than five, would not aid but would rather hurt the case of the union officials (A. 127-28). In a brief memorandum decision, this Court denied Schwartzbaum's motion on the same ground, and on the further ground that "the defendant has failed to satisfy the threshold requirement of demonstrating that the purported newly discovered evidence could not have been with due diligence discovered either before the trial or at the latest at the trial" (A. 106).

We believe that there is a material distinction between the way the newly-discovered evidence may be used by the union officials and the way that it may be used by Schwartzbaum, requiring a new trial for Schwartzbaum, whether or not a new trial is granted the union officials.

While it may be, as this Court said, that counsel representing union officials who are charged with sharing payments with manufacturers would be hesitant to elicit from Glasser the allegation that he had shared much greater amounts involving many other manufacturers with the defendants on trial, that obstacle is not presented in the instant case. To the contrary, it was fully within Schwartzbaum's interest to establish that Glasser would not likely remember his conversations with Schwartzbaum due to the many transactions in which Glasser was engaged. Having alleged that the receipt of payments from six manufacturers required more than forty meetings with those manufacturers, the number of meetings with a substantially greater number of manufacturers, on the same subject, would necessarily have been far greater, numbering into the hundreds. Therefore, we suggest that the strategic consideration and evidentiary value of the newly-discovered evidence in the case against the union officials was so different as to make the Court's analysis inapplicable with regard to the instant case.

The foregoing facts and analysis will put into perspective the issues relating to the new evidence submitted to the defendant by the Government.

Basis For This Motion For A New Trial

As stated above, after the defendant's brief was filed with the Court of Appeals, the Government provided new information which, if it had been known at trial, could have been effectively used on behalf of the defendant in this case. By letter dated September 3, 1974, which we received on September 12, 1974, the Government informed us of the new evidence. A copy of that letter is annexed hereto as Exhibit "B".

The letter states in substance that in connection with a continuing investigation of the fur industry, the Government obtained copies of financial records of Glasser and his wife from several banking institutions. The letter also states:

"In our interviews with Mr. Glasser in May 1974, he identified 1964 as the year he first accepted money from a fur manufacturer to arrange a payoff to a union official. In a recent interview with Mr. Glasser he recalled that the first payment from that previously identified group of manufacturers occurred in 1962. Also at that more recent interview Mr. Glasser estimated that Mrs. Glasser had inherited cash and bonds from her parents. He was not able to specify how much of that inheritance was included in their savings accounts as of 1972. The estimate by Mr. Glasser during the May interviews that \$40,000 to \$50,000 from Mrs. Glasser's parents was included in the savings accounts in 1972 appears to be high and incorrect."

At our request, the Government furnished us with copies of the financial records referred to in their September 3, 1974 letter. A copy of those records will be provided to the Court at the time of the argument of this motion.

The aforesaid records were analyzed on behalf of the defendant by George J. Harren, a certified public accountant. Mr. Harren's affidavit and analysis is annexed hereto. The analysis shows that instead of total cash deposits by Glasser of \$56,701.05, as eventually conceded by Glasser and the Government in connection with the defendant's first motion for a new trial, Glasser in fact deposited at least \$107,850 in cash from 1964 to 1971, as reflected in the records submitted to us (Exhibit "A" annexed to Harren's affidavit). In addition, Glasser deposited \$48,379 either in cash or in checks (available records not necessarily indicating which, but in all cases from undisclosed sources) in those accounts during that period (Exhibit "B" annexed to Harren's affidavit). The total is \$156,229.

This newly-discovered evidence indicates that during the period in question Glasser received money from a great many manufacturers instead of from six as testified at trial. If Glasser received \$14,000 from six manufacturers of which he kept \$5,043 as he testified at trial (A. 49-50), using the same ratio, he would have received \$296,000 from more than one hundred

manufacturers, of which he kept \$156,229. Another possibility is that Glasser received solely \$156,229 from manufacturers and kept it all, in which event, no crime was committed because no labor official was paid.

The newly-discovered evidence reveals a systematic pattern of perjury by Glasser which permeated the substance of the Government's entire case. Glasser's large deposits, if known to the defense at the time of trial, would have provided solid evidence of the defense contention that any monies received by him had been kept by him rather than shared with union representatives. As the Court charged the jury, such a state of facts would not have supported the charges of the indictment (Tr. 424).

Moreover, if it had been known to the defense at the time of trial that Glasser was receiving payments during this period from perhaps one hundred or more manufacturers, rather than merely the six claimed at trial, then Glasser's alleged recollection of conversations with the defendant would have been severely undermined. As it was, Glasser's trial testimony vacillated on the issue of whether he had actually informed the defendant that payments were being made to the union official in question. Although his final testimony was that he had conveyed such information to the defendant, if the extent of his activities had been known by the defense, it would certainly have

provided powerful support for the defense contention that Glasser's alleged recollection was false or unreliable. In addition, with more than one hundred manufacturers involved rather than six, and with the period of time starting in 1962, the defendant could have forcefully argued that Glasser's recollection about giving money to Schwartzbaum at all was faulty and that to the extent payments may have been made, the statute of limitations had run.

For all the reasons we have stated, it is respectfully requested that a new trial be granted to the defendant.

The Request For A Hearing

While we believe that the newly-discovered evidence warrants a new trial, in the alternative, we are requesting a hearing. One of the key facts to develop at a hearing is when the Government first knew or had evidence of the fact that Glasser was lying. The facts in this record on this issue are obscure and apparently the Government has kept them obscure by design. Only at a hearing at which we can examine Glasser and the Assistant United States Attorneys who worked on this matter may we develop these facts with any certainty.

The Government's guarded letter of September 3, 1974, refers to recent interviews with Mr. Glasser in which he recalls that the first payment from a previously identified group of manufacturers occurred in 1962. The financial information which we were given indicates that the first payments received go back only to 1964 not to 1962. In addition,

according to the letter, Mr. Glasser has revised his testimony as to the amount of money which Mrs. Glasser allegedly inherited in jewelry and other assets. The information provided in the September 3, 1974 letter raises a host of questions with regard to what Mr. Glasser is now saying and the extent of his conceded perjury. Surely the Government has asked Glasser and has received from Glasser more detailed information than is revealed in the September 3, 1974 letter.

The Government has taken the position that the names of the manufacturers that Glasser apparently is now revealing is confidential information in connection with an ongoing investigation and that this information does not have to be revealed to us. Note, that it was the Government not the defendant which asked Glasser at the Schwartzbaum trial for the names of the other manufacturers (Tr. 84). Moreover, the names of the other manufacturers would be vitally important to us in connection with this application for a new trial and in connection with a re-trial, if one is granted. If we had the names of the other manufacturers, we could interview them with the idea of learning whether the amount of money which Glasser testified to at trial or has alleged in interviews with the Government is the amount which the manufacturers will testify they paid to him. If that is the fact, then no crime was committed in this case. Moreover,

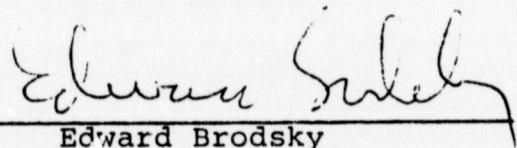
the manufacturers may very well contradict Glasser's testimony and it may be that some or all of the manufacturers will testify that they never gave any money to Glasser and again his veracity would be severely attacked.

We would ask on this motion to have the Government supply to the defendant all memoranda of interviews with Glasser, with manufacturers and with other persons, and all other information which has not yet been supplied to the defendant. In the alternative, we ask that such information be supplied to the Court for inspection in camera to determine whether the information is being properly withheld.

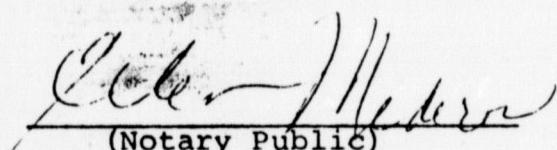
Finally, as shown by the annexed affidavit of George J. Harren, the bank records which were submitted to us by the Government are incomplete so that he was not able to do the full analysis which should be done in connection with this case. In the present context of the case, there is no proceeding in which the defendant may cause subpoenas to be served in order to complete the factual analysis. This, of course, is another reason for a hearing to be held in this case.

A 175

For the reasons stated above, it is respectfully requested that the defendant's motion for a new trial be granted. In the alternative, it is requested that a hearing on the issues presented herein be directed. The defendant further requests oral argument on this motion.


Edward Brodsky

Sworn to before me this
8th day of October, 1974.


(Notary Public)

ELLEN MEDEROS
Notary Public, State of New York
No. 31-7880535
Qualified in New York County
Commission Expires March 30, 1976

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L-219

74-1901

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT-----x
UNITED STATES OF AMERICA,

Appellee,

- v -

STIPULATION

KARL "JACK" SCHWARTZBAUM, : Docket No. 74-1901

Defendant-Appellant.

:

-----x

IT IS HEREBY STIPULATED AND AGREED, by and between the United States of America, by Paul J. Curran, United States Attorney for the Southern District of New York, V. Thomas Fryman, Jr., Assistant United States Attorney, of counsel, and defendant-appellant Karl "Jack" Schwartzbaum, by his counsel Goldstein, Shames & Hyde, that:

1. All proceedings in the appeal herein presently pending in the United States Court of Appeals for the Second Circuit be stayed;
2. Within fifteen days of the order of the United States Court of Appeals for the Second Circuit approving the instant stipulation, counsel for defendant-appellant will move in the United States District Court for

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the Southern District of New York to renew his motion for a new trial in accordance with the reasons expressed in the affidavit of Edward Brodsky, Esq., attached hereto;

3. In the event of a decision of the United States District Court for the Southern District of New York denying said renewed motion, any appeal taken from the order of the United States District Court for the Southern District of New York denying said renewed motion will be consolidated with the appeal herein;

4. Within twenty-one days of any decision of the United States District Court of the Southern District of New York denying said renewed motion, counsel for defendant-appellant will file a revised or supplemental brief in the consolidated appeals; and

5. Within twenty-one days of the filing of said brief, the United States of America will file its brief in the consolidated appeals.

Dated: New York, New York

September 19, 1974

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

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CS:jp
-219

Attorney for Appellee,
United States of America

By: V. Thomas Fryman, JR.
V. THOMAS FRYMAN, JR.
Assistant United States Attorney

Edward Roselli

GOLDSTEIN, SHAMES & HYDE
655 Madison Avenue
New York, New York 10021
Attorneys for Defendant-Appellant.

SO ORDERED:

Wesley P. Tamm

U.S.C.J.

Sept 23, 1974

JCS

73-0753

September 3, 1974

Elkan Abramowitz, Esq.
Weiss Rosenthal Heller & Schwartzman
295 Madison Avenue
New York, New York 10017

Re: United States v. George Stofsky, et al.
United States v. Karl "Jack" Schwartzbaum

Dear Mr. Abramowitz:

In connection with our continuing investigation of the fur industry we have obtained copies of financial records of Jack and Betty Glasser from the following institutions: Chemical Bank, Dollar Savings Bank of New York, E. Lowitz & Co., The East New York Savings Bank, Emigrant Savings Bank, First Federal Savings and Loan Association of New York, and the Greenwich Savings Bank. These records are available at our offices for inspection by counsel for defendants in the Stofsky or Schwartzbaum proceedings. If you or any of the other counsel desire to review these materials, they will be available in the office of Assistant United States Attorney S. Andrew Schaffer.

In our interviews with Mr. Glasser in May 1974, he identified 1964 as the year he first accepted money from a fur manufacturer to arrange a payoff to a union official. In a recent interview with Mr. Glasser he recalled that the first payment from that previously identified group of manufacturers occurred in 1962. Also at that more recent interview Mr. Glasser estimated that Mrs. Glasser had inherited \$30,000 to \$40,000 in jewelry and other assets including cash and bonds from her parents. He was not able to specify how much of that inheritance was included in their savings accounts as of 1972. The estimate by Mr. Glasser dur-

Elkan Abramowitz, Esq. -2- September 3, 1974["]

ing the May interviews that \$40,000 to \$50,000 from Mrs. Glasser's parents was included in the savings accounts in 1972 appears to be high and incorrect.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: John C. Sabetta
JOHN C. SABETTA
Assistant United States Attorney
Tel.: (212) 264-6423

cct: Paul K. Rooney, Esq.
Messrs. Rooney & Evans
521 Fifth Avenue
New York, New York 10017

Stephen Barasch, Esq.
27 East 39th Street
New York, New York 10016

Edward Brodsky, Esq.
Messrs. Goldstein, Shames & Hyde
655 Madison Avenue
New York, New York 10021

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AFFIDAVIT OF GEORGE J. HARREN,
C.P.A., IN SUPPORT OF MOTION (OCTOBER 8,
1974) AND EXHIBITS "A" AND "B" ANNEXED
THERETO

A 182

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA, : 73 Cr. 616
 (L.W.P.)
Plaintiff, :
-against- : AFFIDAVIT
KARL SCHWARTZBAUM, :
Defendant. :
- - - - - x

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

GEORGE J. HARREN, being duly sworn, deposes
and says:

I am and have been a certified public accountant licensed to practice in the State of New York for the past thirty-six years.

Recently, I was given copies of certain bank statements of Jack Glasser and was asked to analyze them. At the outset, it should be noted that I could not do a complete analysis for the following reasons:

- (i) A substantial amount of back-up records were not provided to me. By back-up records, I mean those records which would indicate the nature of certain particular deposits, i.e., whether they were made in cash or by check;

- (ii) Certain of the records of the Chemical Bank were incomplete in that several months were missing;
- (iii) Certain of the bank records which were provided to me start in 1962, while others start several years later. However, even with those records which start later, it is apparent that the account was opened at an earlier time.

Using the records which were made available to me, I found the following, as indicated in work papers which I have prepared, copies of which are annexed hereto as Exhibits "A" and "B":

My analysis of the records shows that from 1964 through 1973, Mr. Glasser deposited a total of \$107,885. in cash in various bank accounts. My analysis of the cash deposits is contained in Exhibit "A" annexed hereto.

In addition to the above, I found further deposits totalling \$48,379.00 which were made either by check or in cash. In certain cases, it is not clear whether the deposits were checks or cash. I am including these amounts in an analysis called "miscellaneous" which is contained in Exhibit "B" annexed hereto.

With respect to Exhibits "A" and "B", the amounts were not sums which were deposited and subsequently withdrawn from Mr. Glasser's account. These amounts remained in his

account and increased his net worth. The total amount which was deposited in Mr. Glasser's account was \$156,264, as shown by totalling the figures in Exhibits "A" and "B" (see Exhibit "C" annexed hereto).

George J. Harren

George J. Harren

Sworn to before me this
8th day of October, 1974.

Ellen Mederos

(Notary Public)

ELLEN MEDEROS
Notary Public, State of New York
No. 31-7880535
Qualified in New York County
Commission Expires March 30, 1974

EXHIBIT A - CONFIRMED CASH DEPOSITS

<u>E.N.Y. Savings</u>	<u>Emigrant Savings</u>	<u>Greenwich Savings</u>	<u>Dollar Savings</u>	<u>Chemical</u>
1964- (\$18,410)	\$ 1,800	\$ 8,200		
1st Quarter	950	500		
2nd Quarter	2,000	1,960		
3rd Quarter				
4th Quarter	1,500	1,500		
1965- (\$15,700)				
3rd Quarter				
1966- (- 0 -)				
1967- (\$111,875)	1,000	3,500		
1st Quarter	4,525			
2nd Quarter				
4th Quarter	\$ 2,850			
1968-\$13,800)	1,800			
1st Quarter	4,100			
2nd Quarter				
3rd Quarter	3,820	1,080		
4th Quarter				
1969- (\$34,050)		\$ 5,400		
1st Quarter	3,000	5,350		
2nd Quarter	5,300	400		
3rd Quarter	6,900	400		
4th Quarter				
1970-\$13,650)				
1st Quarter	350	900		
2nd Quarter	3,100	1,650		
3rd Quarter	5,650	2,000		
1971- (\$400)				
3rd Quarter		400		
TOTAL	<u>\$36.050</u>	<u>\$26,065</u>	<u>\$15,700</u>	<u>\$16,500</u>
	(\$107,885)			

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	<u>E.N.Y.</u>	<u>Emigrant</u>	<u>Greenwich</u>	<u>Dollar</u>	<u>Chemical</u>
1964- (\$1,676.36)		\$ 539.39		\$ 504.65	
1st Quarter		82.62			
2nd Quarter					
1965/6 - (-0-)					
1967- (\$1,407.09)					
2nd Quarter		40.80			
3rd Quarter	\$ 751.05				
4th Quarter	615.24				
A 186					
1968- (\$2,494.99)					
3rd Quarter					
4th Quarter		1,912.27			
1969- (\$17,393.83)					
1st Quarter			6,096.50		
2nd Quarter			7,321.38		
3rd Quarter			1,569.57		
4th Quarter			1,223.20		
1970- (\$7,948.23)					
1st Quarter	163.80		1,170.00		
2nd Quarter			1,990.61		
3rd Quarter	550.00		2,459.30		
4th Quarter			1,614.52		
1971- (\$5,409.56)					
1st Quarter		733.05			
2nd Quarter		1,258.55			
3rd Quarter		1,121.06			
4th Quarter		1,076.50			
1972- (\$6,005.71)					
2nd Quarter	476.60		1,734.00		
3rd Quarter			1,220.80		
4th Quarter	2,574.31				
1973- (\$6,043.26)					
1st Quarter	243.30		1,300.72		
2nd Quarter	243.30		2,778.30		
3rd Quarter			894.92		
4th Quarter			582.72		
TOTAL					
(\$48,379.03)	\$ 6,838.00	\$ 3,768.46	\$ 549.70	\$ 504.65	\$ 36,718.20

EXHIBIT C - SUMMARY OF EXHIBITS A AND B

<u>1964:</u>	Cash	-	\$ 18,410.00
	Misc.	-	<u>1,676.36</u>
	Total		\$ 20,086.36
<u>1965:</u>	Cash	-	\$ 15,700.00
	Misc.	-	<u>- 0 -</u>
	Total		\$ 15,700.00
<u>1966:</u>	Cash	-	- 0 -
	Misc.	-	<u>- 0 -</u>
	Total		- 0 -
<u>1967:</u>	Cash	-	\$ 11,875.00
	Misc.	-	<u>1,407.09</u>
	Total		\$ 13,282.09
<u>1968:</u>	Cash	-	\$ 13,800.00
	Misc.	-	<u>2,494.99</u>
	Total		\$ 16,294.99
<u>1969:</u>	Cash	-	\$ 34,040.00
	Misc.	-	<u>17,393.83</u>
	Total		\$ 51,443.83
<u>1970:</u>	Cash	-	\$ 13,650.00
	Misc.	-	<u>7,948.23</u>
	Total		\$ 21,598.23
<u>1971:</u>	Cash	-	\$ 400.00
	Misc.	-	<u>5,509.56</u>
	Total		\$ 5,809.56
<u>1972:</u>	Cash	-	- 0 -
	Misc.	-	<u>\$ 6,005.71</u>
	Total		\$ 6,005.71
<u>1973:</u>	Cash	-	- 0 -
	Misc.	-	<u>\$ 6,043.26</u>
	Total		\$ 6,043.26
	<u>GRAND TOTAL:</u>		<u>\$156,264.03</u>

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LETTER OF JOHN C. SABETTA
(October 26, 1974)

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73-0753

n-363

October 26, 1974

Honorable Lawrence W. Pierce
United States District Judge
United States Courthouse
Room 2601
Foley Square
New York, New York 10007

Re: United States v. Stofsky, et al., 73 Cr. 614;
United States v. Schwartzbaum, 73 Cr. 616

Dear Judge Pierce:

I am submitting herewith the original and a duplicate original of an affidavit in opposition to the further new trial motions in the above-captioned cases which I have executed, with the request that one of the affidavits be filed in Stofsky and the other in Schwartzbaum.

With one exception, the legal authorities pertinent to determination of those additional motions are discussed in the government's memoranda submitted in May 1974 in opposition to defendants' earlier new trial motions. The exception is defendants' new charge that the government "deliberately suppressed" evidence at the time of the earlier new trial motions.

The facts concerning the government's voluntary production of the additional materials on which defendants base their present motions are set forth in detail at pages 9-14 of my affidavit submitted herewith. That affidavit and the other papers previously submitted in these cases show the following:

(a) The additional savings account records produced by the government for the years 1966 through 1968 for the most part reflected deposits in accounts at the Emigrant Savings Bank and The Greenwich Savings Bank. With respect to the Greenwich and Emigrant accounts, defendants did not consider any deposits in those years in those accounts to be relevant to determination of the first

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73-0753 Honorable Lawrence A. Pierce -2- October 26, 1974
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new trial motions; defendants subpoenaed records from those banks beginning January 1, 1967; the transcripts of those accounts produced in response to those subpoenas showed substantial existing deposits on that date; and defendants made no effort to obtain records of prior years which would show the pattern of accumulation of those funds. The 1969 through 1966 records which the government obtained in May 1974 during the pendency of the earlier new trial motions appeared to me at that time to corroborate the statements made by Mr. Glasser during the May 1974 interviews concerning illegal payments from additional manufacturers beginning in 1964 and other industry sources of income. In a further interview in August 1974 where those records were reviewed, Mr. Glasser modified certain statements he had made to me in the May 1974 interviews. I thereafter informed defendants' counsel of those modifications in a letter dated September 3, 1974 and informed them that all the additional savings account records which we had obtained were available for their review. A copy of that letter is attached to each of the affidavits submitted in support of defendants' new motions.

(b) The incomplete Chemical Bank records, particularly the records for 1969, produced in May 1974 in response to the government's subpoena were of some conceivable, but then indeterminable, significance. Further examination of all of the available bank records for 1968 and 1969 and a further interview with Mr. Glasser in August 1974 led me to conclude that those 1969 Chemical Bank records were consistent with Mr. Glasser's statements to me during the May 1974 interviews. The government's analysis of those records is set forth at pages 1-2 of the government's file memorandum of the August 1974 meeting with Mr. Glasser, a copy of which is attached to my affidavit as Exhibit 7. Nevertheless, because these Chemical Bank records might have some conceivable significance to defendants, the government decided to produce these records to defendant's attorneys. The fact that defendants' attorneys after a lengthy analysis of the new materials have made no claim concerning the 1969 Chemical deposits confirms my view that those records are irrelevant also.

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73-0753

n-363 Honorable Lawrence W. Pierce

-3-

October 26, 1974

The legal standard applicable to defendants' new charge of deliberate suppression of evidence by the government at the time of an earlier new trial motion is discussed in detail in a recent unreported decision by Judge Bauman denying a further new trial motion in United States v. Rosner, 72 Cr. 782 (S.D.N.Y., Aug. 15, 1974); a copy of that decision is enclosed.

In Rosner, the defendant claimed that the government had suppressed evidence favorable to him at the time of an earlier new trial motion. Judge Bauman denied the further new trial motion and stated:

"The simple fact is that he was in no way prejudiced. All that resulted was the denial of a new trial motion; Rosner has now had another opportunity to move for a new trial, and to include in such motion all of the charges of what the Government failed to apprise him in January, 1973." (pp.22-23) (footnote omitted).

Judge Bauman distinguished the legal standard applicable to evaluate a charge of post-trial suppression from the legal standard applicable to a charge of pre-trial suppression:

"The absence of prejudice can best be demonstrated by comparing a motion based on post-trial suppression to one based on pre-trial suppression. In the latter circumstance, the court inquires into the effect of such suppressed evidence on the jury's verdict. If the court deems the effect sufficiently substantial, a new trial is ordered. Where post-trial suppression is alleged however, the court's proper inquiry is into the effect of the disclosures on any new trial motion that has been made. Thus the most Rosner would be entitled to on this branch of the motion is a finding that my decision on his first new trial motion might have been affected by the new evidence, and my affording him another opportunity to move for a new trial." (p. 23)

I am sending a copy of this letter together with copies of my affidavit and the Rosner decision to defendants' attorneys.

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73-0753
n-363

Honorable Lawrence W. Pierce

-4-

October 26, 1974

Respectfully yours,

PAUL J. CURRAN
United States Attorney

By:

JOHN C. SABETTA
Assistant United States Attorney
Telephone: (212) 791-1920

Enclosures

cc: w/encls.

Elkan Abramowitz, Esq.
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27 East 39th Street
New York, New York 10016

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Goldstein, Shames & Hyde,
655 Madison Avenue
New York, New York 10021

A 193

AFFIDAVIT OF JOHN C. SABETTA, ESQ.
IN OPPOSITION TO MOTION (OCTOBER 26,
1974) AND EXHIBITS 5, 6, 7, 8, 9, 10,
AND 11 ANNEXED THERETO.

[Exhibits 1, 2, 3, and 4, con-
sisting of bank records, are
omitted]

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -
UNITED STATES OF AMERICA :
- v - : 73 Cr. 614 (LMP)

GEORGE STOFSKY, CHARLES HOFF,
AL GOLD and CLIFFORD LAGEOLES,
: Defendants.

- - - - -
UNITED STATES OF AMERICA : AFFIDAVIT OF
: JOHN C. SABETTA

- v - : 73 Cr. 616 (LMP)
KARL "JACK" SCHWARTZBAUM, : OFFICE COPY
: BY MAIL BY HAND
: Defendant.

- - - - -
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

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SEARCHED	INDEXED	FILED
DOCKETED	11/7/74	
ENTERED IN DIARY		

JOHN C. SABETTA, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in
the office of Paul J. Curran, United States Attorney for the
Southern District of New York. I served as the government's
trial counsel in United States v. George Stofsky, et al., 73
Cr. 614, and as the government's assistant trial counsel in
United States v. Karl "Jack" Schwartzbaum, 73 Cr. 616. I
make this affidavit in opposition to the motions by defendants
in Stofsky for issuance of a certificate seeking a
remand of that case from the United States Court of Appeals
for the Second Circuit and thereafter for an order granting
a new trial, and in opposition to the motion by the defendant
in Schwartzbaum for a new trial or alternatively an
evidentiary hearing.

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2. Defendants' second round of motions seeking new trials are predicated on bank records of Jack and Betty Hirschman available to their attorneys by the government submitted to a letter dated September 3, 1974, which I sent to defendants' attorneys; a copy of this letter is attached hereto. All of the affidavits submitted in support of defendants' motions. Those bank records were part of a prior prior trial and date to account records pertaining to accounts of Jack and Betty Hirschman which the government made available to defendants' attorneys pursuant to my letter of September 3, 1974.

3. Defendants now extravagantly claim in error: (a) that "bank documents themselves reveal over \$101,000 in either actual cash deposits or miscellaneous, probable cash deposits between 1962 and 1973" -- assertedly some three times more than the sum of deposits previously known to the Court and defendants (Affidavit of Alkan Abramowitz, sworn to on September 13, 1974, p. 3) (emphsis added); (b) that this new evidence "wholly invalidates] the entire basis for this Court's prior denial of [defendants'] new trial motion" (id. at 5); and (c) that in any event a new trial is required because the government deliberately and wilfully suppressed pertinent evidence received by it during the pendency of the first new trial motions (id. at 1-2, 6-7).

4. Defendants' charge of deliberate government suppression of evidence is singularly inappropriate and baseless. It was the government which, sir sponte, produced to defendants the "new" bank documents which they rely upon here. Those "new" records add nothing of significance to determination of the first new trial motions, and are consistent with the position advanced by the government at the time those motions were pending. In large measure the "new" bank records

pertaining to savings accounts of Mr. and Mrs. Glasser at the Mutual Savings Bank and The Greenwich Savings Bank during the period 1962 through 1966. Defendants themselves apparently considered those records to be of no significance in contesting the first new trial motions since their earlier subpoenae to those banks requested only records beginning in 1967. Indeed the only "new" bank documents received by the government in May 1974 which were of any conceivable, and then inconceivable, significance were the incomplete chemical lab records. In the course of subsequent investigation, the propensity of which was referred to in the affidavits filed in opposition to defendants' first new trial motions, those records were found to be consistent with the income, expenses and deposits analysis set forth in the affidavits in opposition to the first new trial motions. The accuracy of that finding has been confirmed by defendants who, after lengthy analysis of the "new" bank records, have raised no issue with respect to it. In sum, the "new" bank records were produced to defendants out of a desire to make absolutely sure defendants were given full opportunity to make any argument imaginative counsel could devise. The palpably weak and fallacious arguments defendants have fashioned from those "new" records confirm the latter's insubstantiality. Defendants own recognition of that fact serves to explain their felt need to unfuel baseless claims of prosecutorial misconduct.

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5. The claimed significance for the "new" bank records is founded on an analysis by George J. Hirren, a certified public Accountant retained by defendants, of deposits in the accounts of Jack and Betty Glasser during the years 1961 through 1973 at the following banks: Chemical Bank, Dollar Savings Bank, The East New York Savings Bank, Citizens Savings Bank and The Greenwich Savings Bank. The analysis is without merit.

Exhibit B
Exhibits By Defendants
In September 1974

6. Defendants claim that "new" bank records reveal over \$104,000 in deposits during the years 1964 through 1973 and over \$161,000 during the years 1962 through 1973. The following columns show the "new" bank records and the records which defendants and the Court possessed at the time of the first new trial motions:

<u>Bank</u>	<u>Additional Documents Provided by Government Pursuant to September 3, 1974 Letter</u>	<u>Documents Already Possessed and Included As Exhibits to Affidavits In Support of Defendants' Previous New Trial Motions</u>
Chemical Bank	Monthly ledgers for December 1968 through December 1971 and June 1972 through August 1973 with all available deposit slips for the corresponding period; copies attached hereto as Exhibit 1.	
Dollar Savings Bank	Transcript of account from January 1, 1960, through July 11, 1966, when account closed; copy attached hereto as Exhibit 2.	

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The First
New York
Savings
Bank

Transcript of accounts from October 17, 1967, when first account opened, through October 2, 1973, when last account closed, with available deposit slips; copies attached as Exhibit F to Abramowitz affidavit and as Exhibit C to Esbitt affidavit.

Emigrant Savings Bank Ledger cards for period from February 16, 1962, when account opened, to June 30, 1967; copies attached hereto as Exhibit 3.

Transcript of account from January 1, 1967, through March 27, 1970, when account closed, with available deposit slips for that period; copies attached as Exhibit H to Abramowitz affidavit and as Exhibit E to Esbitt affidavit.

The Greenwich Savings Bank Transcript of account from February 16, 1962, when account opened, through April 2, 1971, when account closed; copy attached hereto as Exhibit 4.

Transcript of account from January 1, 1967 through April 2, 1971, with available deposit slips for that period; copies attached as Exhibit G to Abramowitz affidavit and as Exhibit D to Esbitt affidavit.

A list of all deposits in the Glasser accounts as shown in the documents described above is attached hereto as Exhibit 5.

7. Laying aside defendants' erroneous computations, which are analyzed together with other miscellaneous factual errors in defendants' papers in Exhibit 6 attached hereto, there was deposited in the Glasser accounts during the period January 1, 1962 through December 31, 1973, a total of \$157,680.83. Of that total, \$66,416.96 was shown by the bank records possessed by defendants and the Court at the time of the first new trial motions; of the remaining \$91,271.87, \$12,117.96 represents deposits in the Chemical Bank account during the years 1971 through 1973, which all concede are irrelevant since Mr. Glasser during those years had departed the fur market. Accordingly, the total gross deposits pertinent to the instant motions as shown by the "new" bank

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records is \$79,153.89, less than one-half the amount defendants claim, the "new" bank records reveal.

Import of the "New" Bank Records

8. While the affidavits in support of defendants' present motions are lengthy and repeat much of the rhetoric in their earlier papers about the necessity for a new trial because of the falsity of Glasser's testimony about the source of the \$120,000 in his accounts, they contain only two new arguments as to why the bank records mandate new trials. The one new argument in the Stofsky papers appears at pages 8-9 of the Abramowitz affidavit, sworn to on October 10, 1974:

"Moreover, the new bank records themselves reveal over \$161,000.00 in either actual cash deposits or miscellaneous, probable cash deposits between 1962 and 1973. . . . If, as Glasser testified at the trial, he gave Union officials an average of \$3.00 for every \$1.00 he kept, that would mean he took nearly \$500,000.00 in bribes and that these defendants received over \$320,000.00 in payoffs. That is simply beyond belief."

The one new argument in the Schwartzbaum papers appears at pages 10-11 of the affidavit of Edward Brodsky, sworn to on October 8, 1974:

"If Glasser received \$14,000 from six manufacturers of which he kept \$5,043 as he testified at trial (A. 49-50), using the same ratio, he would have received \$206,000 from more than one hundred manufacturers, of which he kept \$156,229

. . . .
Moreover, if it had been known to the defense at the time of trial that Glasser was receiving payments during this period from perhaps one hundred or more manufacturers, rather than Glasser's alleged recollection of conversations with the defendant would have been severely undermined."

9. The fundamental error underlying both of these arguments, and the disabling limitation of the gross deposits

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analysis, is the indefensible assumption that every dollar deposited in the Glasser accounts during the period 1962 through 1973 is directly attributable to union fur manufacturer payoffs to Mr. Glasser. That baseless assumption necessarily excludes consideration of salaries earned, dividends, possible other sources of income detailed by Mr. Glasser in his interviews with government counsel in May 1974 and contributions from bank or accounts.

The fallacious nature of defendants' analysis is best illustrated by reference to the "new" bank documents reflecting deposits reflected therein, first viewed by defendant's counsel in October 1973. For convenience of analysis, this new data is treated in two sub-groups: deposits in savings accounts during the period 1962 through 1966, and Chemical bank checking account deposits beginning in December 1964.

Savings Account Deposits, 1962-1966

II. Defendants assert that the total gross deposits during the period 1962 through 1966 made in savings accounts at the Dollar Savings Bank, Emigrant Savings Bank and The Greenwich Savings Bank, which total \$56,041.20, are attributable to union manufacturer cash payoffs to Glasser.

(a) More than half of that total, \$33,032.33, is of undetermined character because the deposit tickets for that period for the Dollar and Greenwich accounts are unavailable. Furthermore, \$854.15 of that total is attributable to known check deposits in the Emigrant account.

(b) Even more significantly, however, \$19,408.41 of the total \$56,041.20 is attributable to two single deposits of extraordinary and undetermined character: on January 7, 1964 there was a deposit of \$6,898.44 in the Greenwich account, and on July 14, 1965 there was a deposit of \$12,600.00 in the Dollar account.

Defendants' assumption that these two extraordinary deposits of unknown character totaling nearly \$20,000 -- one or both of which may have been check deposits and both of which are in marked disparity with the other deposits of that period -- are cash deposits attributable to manufacturers' payoffs is totally without foundation.

(c) Finally, during this 1962-1966 period, \$6,186.55 was withdrawn from those accounts, some portion of which may subsequently have been redeposited.

12. The pattern of periodic small cash deposits in Mr. Glasser's savings accounts during the years prior to 1967 is, on the whole, consistent with the statements made by Mr. Glasser during the interviews with me in May 1974. As shown in the papers filed by the government in opposition to the earlier new trial motions, Mr. Glasser stated in the May 1974 interviews that he began to funnel payoffs to union officials from numerous fur manufacturers, retaining a part for himself, in 1964.

13. Finally, it is surprising that defendants would now place such emphasis on the total deposits in the Glaser accounts for a period beginning in 1962 (or 1964). Previously, defendants considered 1967 to be the earliest year for which the Glaser bank records had any significance. In their earlier subpoenas to The East New York Savings Bank, the Emigrant Savings Bank and The Greenwich Savings Bank, they requested only records beginning in 1967. If records of any prior years could have been of any conceivable assistance to defendants in the presentation of their original new trial motion, surely they would have requested them at that time.

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Chemical Bank Deposits

14. As a part of their claim that Mr. Glasser received payoffs from union manufacturers exceeding \$160,000, defendants include deposits made by Mr. and Mrs. Glasser in their Chemical Bank checking account in 1971, 1972 and 1973 totaling \$12,117.98. Those deposits occurred after Mr. Glasser left the market and any arguable payoffs to him had ceased and nearly a year after the date of the last payoff to a union official testified to by Glasser at the trial. As such they are totally irrelevant and their inclusion in defendants' analysis here is grossly misleading. During the pendency of the earlier new trial motions, defendants possessed similarly irrelevant material with respect to savings account deposits in these latter years, but there correctly chose not to use it.

15. The new records from Chemical Bank are, furthermore, consistent with the information provided by Mr. Glasser during the May 1974 interviews as discussed at pages 1 and 2 of the file memorandum of a further interview with Mr. Glasser on August 23, 1974, a copy of which is attached hereto as

Exhibit 7.

Alleged Government Suppression
of Evidence Received By It At The
Time of the First New Trial Motions

16. Defendants assert that during the pendency of the first new trial motions the government received financial information, i.e., the records of deposits in the savings accounts from 1962 through 1966 and certain of the Chemical Bank checking account records, which was relevant to determination of those motions, and which it knowingly and deliberately suppressed from defendants and this Court. Defendants then continue that that alleged suppression in and of itself

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requires a new trial. That charge is contradicted by the pertinent facts which are set forth below.

17. On April 22, 1974, counsel for defendants in Stofsky served papers in support of a new trial motion based on certain bank records of Jack and Betty Glasser which they had subpoenaed, part during and part after the Stofsky trial. On May 21, 1974 counsel for Schwartzbaum served papers in support of a new trial motion based on the same records.

18. Following receipt of the papers in support of the original new trial motion in Stofsky, the government commenced an investigation of the allegations in these papers as well as a broader investigation of the fur manufacturing industry. As discussed in my affidavit sworn to on May 23, 1974, and previously submitted in opposition to defendants' first new trial motion in Stofsky, government counsel interviewed Mr. and Mrs. Glasser on May 3, 6, 13 and 14, 1974. In addition grand jury subpoenas were issued on May 9 and 10, 1974, for additional financial records of Mr. and Mrs. Glasser, including subpoenas for records from Chemical Bank and the Dollar Savings Bank as well as for records from The East New York Savings Bank, Emigrant Savings Bank and The Greenwich Savings Bank, which covered a broader time period than had been specified in the earlier subpoenas issued by the Stofsky defendants. Copies of the grand jury subpoenas directed to those five institutions are attached hereto as Exhibit 8. In response to those subpoenas, The Greenwich Savings Bank and the Emigrant Savings Bank forwarded documents with letters dated May 14 and May 22, 1974, respectively--including documents for the years 1962 through 1966; representatives of Chemical Bank and The East New York Savings Bank delivered documents to me on May 21, 1974; and a representative of the Dollar Savings Bank delivered documents to me on May 22, 1974.

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19. When I reviewed the above documents, it was apparent that everything called for in the subpoenas had not been produced--particularly by Chemical Bank. While the Chemical Bank subpoena had called for all monthly statements and deposit slips for the period beginning January 1, 1960 through December 31, 1973, the Bank had produced only copies of monthly statements for the months December 1968 through December 1971 and July 1972 through August 1973, and had produced no deposit slips.

20. I was aware that new trial motions were pending in Stofsky and Schwartzbaum with sentencing of the Stofsky defendants scheduled for May 31, 1974, and sentencing of Schwartzbaum scheduled for June 4, 1974. In my judgment, however, the bank records which had been produced in response to the grand jury subpoenas did not establish that any statement in the government's papers which had been submitted in response to the Stofsky and Schwartzbaum motions was erroneous. On May 30, 1974, Assistant United States Attorney V. Thomas Kryman, Jr., who had served as trial counsel in Schwartzbaum, and I met with Silvio J. Mollo, Chief Assistant United States Attorney for the Southern District of New York. We discussed with him whether we should make an immediate disclosure to defendants' counsel and the Court of the partial financial records of Mr. and Mrs. Glasser. Alternatively, we considered whether we should wait until we obtained all the records available and determined their relevance to the new trial motion, with production of any documents which could even arguably provide support for

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defendants' position to be made to defendants' counsel at that time. Mr. Mollo concurred that the best procedure to follow was the latter one, and we determined to continue the investigation. I pointed out to Mr. Mollo at that meeting that we had informed the Court in the papers which we had submitted in opposition to the pending Stoffsky and Schwartzbaum new trial motion that a further investigation of the fur manufacturing industry was under way.

21. On information and belief, the following week during my absence from the office Mr. Fryman reviewed with Thomas D. Edwards, chief of the Criminal Division of the United States Attorney's Office, the matters discussed during the May 30 meeting with Mr. Mollo. Mr. Edwards agreed that we should not make a piecemeal production of the incomplete financial records, but rather pursue the continuing investigation.

22. During June through August 1974 we attempted to obtain all of the remaining financial records that were available. Attached hereto as Exhibit 9 are copies of letters dated June 24, 1974 and July 19, 1974 to Chemical Bank concerning production of additional materials. All of the remaining available Chemical documents were finally produced on August 16, 1974, including deposit slips for deposits shown on the monthly statements for the months December 1968 through December 1971 and June 1972 through August 1973 when the account was closed. I was informed at that time by a representative of Chemical Bank that monthly statements for the Classer accounts for the months prior to December 1968 had been destroyed, that the monthly statements for January 1971 through May 1972 were missing, and that no

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other deposit slips were available. I also requested additional documents from the Emigrant Savings Bank, which I received with a covering letter dated July 25, 1974.

23. Following receipt and analysis of the additional Chemical Bank documents, which completed our review of the documents available, Mr. Pryman and I interviewed Mr. Glasser in Miami, Florida on August 23, 1974. A copy of a memorandum of that interview, with certain names and other details removed at the request of other than Mr. Glasser's counsel selected, is attached hereto as Exhibit 7. Mr. Glasser's conduct was during that interview was consistent with his statements to me during the May 1974 interviews with the following exceptions. First, he said that he had not received payoffs from manufacturers in 1962, which was inconsistent with his earlier statement that those payoffs began in 1964. Second, he estimated his wife's inheritance at \$30,000 to \$40,000 in value and could not specify what portion of that was included in his savings accounts. In the May 1974 interview Mr. Glasser had estimated that \$40,000 to \$50,000 of the money in his savings accounts had come from his wife's inheritance. Mr. Pryman and I thereafter determined that the fact of those inconsistencies should be made known to defendants' counsel, as well as the bank records for the period 1960 through 1966 for whatever use defendants' counsel could make of them in connection with Mr. Glasser's inconsistent statements. Moreover, while the Chemical Bank deposits were consistent with the income, expense and deposits analysis set forth in Exhibit 1 of my affidavit sworn to on May 23, 1974, Mr. Pryman and I determined to make available to defendants' counsel the records for that checking account as well.

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24. Mr. Foyen and I then prepared the letter to defendants' attorneys advising them that the materials which we had obtained were available for their review. I signed the letter in my office on Sunday, September 1, 1974, and left it to be mailed on Tuesday, September 3, 1974, since I was leaving for a two week trip to Europe the evening of September 1, 1974. Mr. Foyen was away from New York from September 1, 1974, through September 10, 1974. When he returned to the office on September 11, 1974, he discovered that because of a mistake the letter had not been mailed; it was then mailed to defendants' attorneys on that date.

25. In light of the foregoing, defendants' assertion that the government during the pendency of the first motion to dismiss deliberately suppressed evidence it knew to be pertinent and favorable to defendants is without merit.

Request for Hearing

26. Alternatively the motion in Schwartzbaum's for "an evidentiary hearing on the issues raised by defendant's motion herein." The affidavit submitted in support of the Schwartzbaum motion makes two points as to why the Court should order such a hearing: first, to permit counsel to subpoena further bank records of Mr. and Mrs. Glasser (n. 15); and second, to allow access to all details of the government's further investigation of the fur manufacturers identified by Mr. Glasser as making payoffs and memoranda of any interviews with any of those manufacturers (pp. 12-15).

27. An evidentiary hearing is not necessary in order to allow Schwartzbaum to subpoena further records because the government has already subpoenaed the bank records for the period January 1, 1960, through December 31, 1973, and has given defendants all of the records produced in response to those subpoenas. With regard specifically to the

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Chemical Bank records, attached hereto as Exhibit 10 is an affidavit of Victor Quadri, a Clerk in the Legal Department of Chemical Bank, which states that the following items for the account of Mr. and Mrs. Glasser are not available: (1) monthly statements prior to December 1968; (2) monthly statements for January 1972 through May 1972; and (3) deposit slips for deposits included in those two months of monthly statements.

28. With respect to the second point, the government records submitted in opposition to the earlier motion and page 14 of this affidavit describe in detail the actions of the government attorneys with respect to Mr. Glasser. The government has not produced the names of other fur manufacturers identified by Mr. Glasser or information about any subsequent interviews with such manufacturers. In my judgment disclosure of that information would seriously compromise the continuing investigation of the fur industry. Furthermore, even if certain manufacturers during the investigation denied making payments to Mr. Glasser as he claimed, that should not help defendants here. Sam Sherman, my counsel and Sol Cohen died of Mr. Glasser's charges against them from March 1973, when the criminal indictment here was filed, until March 1974, when they pleaded guilty.

Schwartzbaum's Knowledge of Bank Records Prior to Trial

29. The affidavit by Schwartzbaum's present counsel, Edward Brodsky, submitted in support of Schwartzbaum's present motion states at page 5: "Following the instant trial (A. 45), defense counsel learned about the bank records which revealed Glasser's cash deposits."

30. Elton Abramowitz, the attorney for the Strofsky defendants, has informed me that he met with Schmitzbahn's trial counsel, William Hobitt, prior to the Schmitzbahn trial and told Mr. Hobitt that he had obtained bank records of accounts of Mr. and Mrs. Gleason showing large cash deposits from 1967 through 1970 and that he subsequently communicated to Mr. Hobitt a copy of a memorandum which I prepared concerning a telephone conversation of this writer with Mr. Abramowitz on August 21, 1974 is attached hereto as Exhibit 11.

cc: M.L. [Signature]
M.G. GALATIA
Assistant United States Attorney

John G. Doherty
October 1, 1974

RECORDED AND INDEXED
SEARCHED AND SERIALIZED
FILED OCTOBER 1, 1974
CLERK'S OFFICE U.S. DISTRICT COURT
CITY OF NEW YORK

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EXHIBIT 5

JACK AND BETTY GLASSER
 INDIVIDUAL DEPOSITS BY BANK AS SHOWN IN BANK RECORDS
 SUBPOENAED BY GOVERNMENT AND DEFENDANTS

<u>CHEMICAL BANK</u>				
<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
12/5/68		25.00		
12/9/68	300.00			
12/31/68	890.00	10.00		
<u>Total</u>	<u>\$1,190.00</u>	<u>\$35.00</u>		<u>\$1,225.00</u>
1/6/69		187.50		
1/27/69	4,500.00			
3/31/69	900.00			
4/14/69		187.50		
4/21/69	1,500.00			
4/24/69		500.00		
5/5/69		78.88		
5/12/69	200.00			
5/28/69	3,850.00	35.00		
6/16/69		70.00		
6/25/69		225.00		
7/7/69		187.50		
7/21/69		167.00		
7/28/69		50.00		
8/1/69			300.00	
8/20/69		91.68		
9/5/69	400.00			
10/3/69		214.00		
10/8/69		20.00		
11/3/69		59.80		
11/5/69	268.00	15.00		
11/10/69		246.40		
<u>Total</u>	<u>\$12,010.00</u>	<u>\$2,335.26</u>		<u>\$300.00</u> <u>\$14,653.26</u>
1/12/70		210.00		
1/26/70	600.00			
2/24/70	300.00			
3/16/70		60.00		
4/6/70	350.00	200.00		
4/9/70	400.00			
5/5/70		85.30		
5/15/70		31.31		
5/19/70		14.00		
6/11/70	100.00			
6/17/70	800.00	10.00		
7/6/70		200.00		
7/23/70	300.00			
7/27/70		23.00		
7/28/70	1,700.00			
8/3/70		59.80		
8/4/70		25.50		
8/10/70		1 ^b .00		
8/25/70		100.00		
8/27/70		37.00		
8/28/70		7.50		
9/1/70		100.00		
10/15/70		15.52		
10/16/70		48.00		
10/20/70		244.00		
11/5/70		146.30		
12/7/70		282.10		
<u>Total</u>	<u>\$1,370.00</u>	<u>\$7,000.73</u>		<u>\$1,200.00</u>

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<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
1/5/71		364.10		
2/24/71		126.85		
3/4/71		242.10		
4/5/71		381.45		
5/18/71		288.20		
6/3/71		188.90		
6/11/71	250.00	150.00		
7/7/71		323.90		
7/27/71	120.00			
8/2/71		76.50		
8/3/71		202.70		
8/23/71		34.06		
9/3/71		193.90		
9/7/71	100.00			
9/17/71	200.00			
9/27/71	100.00			
10/5/71	144.00			
10/5/71		256.00		
11/1/71		76.50		
11/5/71	100.00			
12/6/71	200.00			
<u>Total</u>	<u>\$1,214.00</u>	<u>\$2,975.16</u>		<u>\$4,189.16</u>

[JANUARY - MAY 1972 ledgers and corresponding deposit slips not available]

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
7/5/72	150.00	115.00		
7/6/72		210.00		
8/4/72			277.00	
8/9/72			250.00	
8/24/72		250.00		
9/5/72	150.00	115.00		
9/12/72		217.00		
10/2/72		115.00		
10/4/72		453.30		
10/31/72		115.00		
11/2/72			51.00	
11/3/72		243.30		
12/4/72		243.30		
<u>Total</u>	<u>300.00</u>	<u>\$2,076.90</u>	<u>\$578.00</u>	<u>\$2,954.90</u>

1/2/73		115.00		
1/3/73		372.09		
2/5/73			452.93	
2/28/73		117.40		
3/5/73		243.30		
4/2/73			325.00	
4/3/73		243.30		
4/13/73		2,210.00		
6/29/73	300.00	21.60		
7/3/73		357.80		
7/6/73		215.50		
<u>Total</u>	<u>\$300.00</u>	<u>\$3,895.99</u>	<u>\$777.93</u>	<u>\$4,973.92</u>

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DOLLAR SAVINGS BANK

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
7/11/61			500.00	
10/16/61			950.00	
12/26/61			1,100.00	
<u>Total</u>			<u>\$2,550.00</u>	<u>\$2,550.00</u>
4/20/62			500.00	
5/15/62			400.00	
7/3/62			300.00	
9/17/62			925.00	
11/8/62			250.00	
11/13/62			1,000.00	
<u>Total</u>			<u>\$3,375.00</u>	<u>\$3,375.00</u>
1/17/63			253.71	
<u>Total</u>			<u>\$253.71</u>	<u>\$253.71</u>
3/12/64			504.65	
<u>Total</u>			<u>\$504.65</u>	<u>\$504.65</u>
7/12/65			1,000.00	
7/14/65			12,600.00	
7/30/65			900.00	
8/9/65			600.00	
8/12/65			600.00	
<u>Total</u>			<u>\$15,700.00</u>	<u>\$15,700.00</u>

VOLUME 4
9-416

A 214

THE EAST NEW YORK SAVINGS BANK

Date	Cash	Checks	Undetermined	Total
10/17/67	751.05			
12/27/67	2,850.00	365.24		
<u>Total</u>	\$3,601.05	\$365.24		<u>\$3,966.29</u>
2/14/68	1,800.00			
4/8/68			3,000.00	
5/20/68	1,250.00			
10/28/68	3,000.00			
<u>Total</u>	\$6,050.00		<u>\$3,000.00</u>	<u>\$9,050.00</u>
2/7/69		118.88		
3/14/69	2,000.00			
3/31/69	1,000.00			
4/30/69		8.00		
7/29/69	4,000.00			
8/20/69	1,300.00			
12/23/69	4,800.00			
12/26/69	2,100.00			
<u>Total</u>	\$15,200.00	<u>\$126.88</u>		<u>\$15,326.88</u>
2/24/70	350.00	163.80		
4/6/70	2,500.00			
4/9/70	600.00			
7/28/70	3,500.00			
8/3/70	2,150.00			
9/23/70	550.00			
<u>Total</u>	\$9,650.00	<u>\$163.80</u>		<u>\$9,813.80</u>
4/7/71		400.00		
5/7/71		820.40		
<u>Total</u>		<u>\$1,220.40</u>		<u>\$1,220.40</u>
5/4/72		275.80		
6/5/72		200.80		
12/13/72		2,574.31		
<u>Total</u>		<u>\$3,050.91</u>		<u>\$3,050.91</u>
1/4/73		243.30		
6/4/73		243.30		
<u>Total</u>		<u>\$486.60</u>		<u>\$486.60</u>

VTPR:mc-5
d-416EMIGRANT SAVINGS BANK

Date	Cash	Checks	Undetermined	Total
2/26/62	250.00			
2/26/62	200.00			
3/13/62	100.00			
3/22/62	100.00			
5/23/62	100.00			
5/25/62	100.00			
6/5/62	150.00			
6/7/62	100.00			
6/7/62		45.00		
6/14/62	100.00			
6/21/62	200.00			
6/29/62	77.35			
7/6/62		60.16		
7/13/62	100.00			
7/20/62	250.00			
7/31/62	200.00			
8/8/62	250.00			
8/30/62	250.00			
9/5/62	200.00			
9/18/62	250.00			
10/1/62	200.00			
10/3/62	100.00			
10/3/62	150.00			
10/11/62	300.00			
10/31/62	200.00			
11/23/62		71.18		
12/12/62	400.00			
	\$4,327.35	\$176.34		<u>\$4,503.69</u>
1/2/63	50.00			
1/14/63	230.00			
1/16/63	147.37			
1/15/63	1,300.00			
7/17/63	350.00			
8/5/63	850.00			
8/12/63	700.00			
8/14/63		55.80		
8/19/63	650.00			
8/30/63	500.00			
9/9/63	250.00			
9/10/63	250.00			
11/12/63	800.00			
12/13/63	500.00			
<u>Total</u>	<u>\$6,577.37</u>	<u>\$55.80</u>		<u>\$6,633.17</u>

A 216

VTPRnc-6
d-416

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
1/2/64	400.00			
1/13/64		539.39		
1/20/64	200.00			
2/13/64	500.00			
2/24/64	700.00			
4/2/64	200.00			
4/7/64	300.00			
4/10/64	450.00			
5/4/64		82.62		
7/14/64	1,100.00			
8/3/64	900.00			
11/10/64	1,500.00			
<u>Total</u>	<u>\$6,250.00</u>	<u>-\$622.01</u>		<u>\$6872.01</u>
3/20/67	1,000.00			
4/24/67		40.80		
<u>Total</u>	<u>\$1,000.00</u>	<u>-\$40.80</u>		<u>\$1,040.80</u>
7/5/68	970.00			
8/29/68	2,850.00	942.27		
<u>Total</u>	<u>\$3,820.00</u>	<u>-\$942.27</u>		<u>\$4,762.27</u>
10/6/69	2,500.00	613.06		
10/17/69		82.57		
10/24/69		93.35		
10/31/69		93.35		
11/12/69		93.35		
11/17/69		107.35		
11/24/69		108.35		
<u>Total</u>	<u>\$2,500.00</u>	<u>-\$1,191.38</u>		<u>\$3,601.38</u>

THE GREENWICH SAVINGS BANK

<u>Date</u>	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>
2/16/62			500.00	
3/16/62			150.00	
5/22/62			100.00	
5/23/62			50.00	
5/29/62			100.00	
5/31/62			100.00	
6/7/62			100.00	
6/14/62			100.00	
6/22/62			100.00	
7/5/62			200.00	
7/17/62			250.00	
7/30/62			300.00	
8/2/62			200.00	
8/30/62			250.00	
8/31/62			150.00	
9/11/62			250.00	
9/25/62			500.00	
10/5/62			500.00	
10/15/62			50.00	
11/14/62			200.00	
11/26/62			52.50	
11/27/62			100.00	
<u>Total</u>			<u>\$4,302.50</u>	<u>\$4,302.50</u>
1/2/63			50.00	
1/7/63			250.00	
1/14/63			478.33	
10/7/63			400.00	
<u>Total</u>			<u>\$1,178.33</u>	<u>\$1,178.33</u>
1/2/64			400.00	
1/7/64			6,808.44	
2/13/64			400.00	
3/16/64			600.00	
4/2/64			200.00	
4/7/64			300.00	
5/7/64			549.70	
7/14/64			510.00	
8/3/64			1,000.00	
8/17/64			450.00	
11/10/64			1,500.00	
<u>Total</u>			<u>\$12,718.14</u>	<u>\$12,718.14</u>
4/5/67	2,100.00	1,420.06		
5/16/67	3,900.00			
5/22/67	550.00	25.00		
6/2/67			50.00	
<u>Total</u>	<u>\$6,550.00</u>	<u>\$1,445.06</u>	<u>\$50.00</u>	<u>\$1,045.06</u>
9/10/68	1,080.00			
<u>Total</u>	<u>\$1,080.00</u>			<u>\$1,080.00</u>
10/10/69			82.57	
11/10/69	4,520.00			
<u>Total</u>	<u>\$4,520.00</u>		<u>82.57</u>	<u>\$4,602.57</u>

A 218

EXHIBIT 6

1-210-6
L-416

ERRORS IN DEFENDANTS' ANALYSIS OF BANK RECORDS OF JACK AND DENNY GLASSER

GOVERNMENT

DEFENDANTS

ERROR IN DEFENDANTS'
TOTAL

<u>Car'd.</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>	<u>Cash</u>	<u>Miscellaneous</u>	<u>Total</u>

	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	20100	20101	20102	20103	20104	20105	20106	20107	20108	20109	20110	20111	20112	20113	20114	20115	20116	20117	20118	20119	20120	20121	20122	20123	20124	20125	20126	20127	20128	20129	20130	20131	20132	20133	20134	20135	20136	20137	20138	20139	20140	20141	20142	20143	20144	20145	20146	20147	20148	20149	20150	20151	20152	20153	20154	20155	20156	20157	20158	20159	20160	20161	20162	20163	20164	20165	20166	20167	20168	20169	20170	20171	20172	20173	20174	20175	20176	20177	20178	20179	20180	20181	20182	20183	20184	20185	20186	20187	20188	20189	20190	20191	20192	20193	20194	20195	20196	20197	20198	20199	20200	20201	20202	20203	20204	20205	20206	20207	20208	20209	20210	20211	20212	20213	20214	20215	20216	20217	20218	20219	20220	20221	20222	20223	20224	20225	20226	20227	20228	20229	20230	20231	20232	20233	20234	20235	20236	20237	20238	20239	20240	20241	20242	20243	20244	20245	20246	20247	20248	20249	20250	20251	20252	20253	20254	20255	20256	20257	20258	20259	20260	20261	20262	20263	20264	20265	20266	20267	20268	20269	20270	20271	20272	20273	20274	20275	20276	20277	20278	20279	20280	20281	20282	20283	20284	20285	20286	20287	20288	20289	20290	20291	20292	20293	20294	20295	20296	20297	20298	20299	20300	20301	20302	20303	20304	20305	20306	20307	20308	20309	20310	20311	20312	20313	20314	20315	20316	20317	20318	20319	20320	20321	20322	20323	20324	20325	20326	20327	20328	20329	20330	20331	20332	20333	20334	20335	20336	20337	20338	20339	20340	20341	20342	20343	20344	20345	20346	20347	20348	20349	20350	20351	20352	20353	20354	20355	20356	20357	20358	20359	20360	20361	20362	20363	20364	20365	20366	20367	20368	20369	20370	20371	20372	20373	20374	20375	20376	20377	20378	20379	20380	20381	20382	20383	20384	20385	20386	20387	20388	20389	20390	20391	20392	20393	20394	20395	20396	20397	20398	20399	20400	20401	20402	20403	20404	20405	20406	20407	20408	20409	20410	20411	20412	20413	20414	20415	20416	20417	20418	20419	20420	20421	20422	20423	20424	20425	20426	20427	20428	20429	20430	20431	20432	20433	20434	20435	20436	20437	20438	20439	20440	20441	20442	20443	20444	20445	20446	20447	20448	20449	20450	20451	20452	20453	20454	20455	20456	20457	20458	20459	20460	20461	20462	20463	20464	20465	20466	20467	20468	20469	20470	20471	20472	20473	20474	20475	20476	20477	20478	20479	20480	20481	20482	20483	20484	20485	20486	20487	20488	20489	20490	20491	20492	20493	20494	20495	20496	20497	20498	20499	20500	20501	20502	20503	20504	20505	20506	20507	20508	20509	20510	20511	20512	20513	20514	20515	20516	20517	20518	20519	20520	20521	20522	20523	20524	20525	20526	20527	20528	20529	20530	20531	20532	20533	20534	20535	20536	20537	20538	20539	20540	20541	20542	20543	20544	20545	20546	20547	20548	20549	20550	20551	20552	20553	20554	20555	20556	20557	20558	20559	20560	20561	20562	20563	20564	20565	20566	20567	20568	20569	20570	20571	20572	20573	20574	20575	20576	20577	20578	20579	20580	20581	20582	20583	20584	20585	20586	20587	20588	20589	20590	20591	20592	20593	20594	20595	20596	20597	20598	20599	20600	20601	20602	20603	20604	20605	20606	20607	20608	20609	20610	20611	20612	20613	20614	20615	20616	20617	20618	20619	20620	20621	20622	20623	20624	20625	20626	20627	20628	20629	20630	20631	20632	20633	20634	20635	20636	20637	20638	20639	20640	20641	20642	20643	20644	20645	20646	20647	20648	20649	20650	20651	20652	20653	20654	20655	20656	20657	20658	20659	20660	20661	20662	20663	20664	20665	20666	20667	20668	20669	20670	20671	20672	20673	20674	20675	20676	20677	20678	20679	20680	20681	20682	20683	20684	20685	20686	20687	20688	20689	20690	20691	20692	20693	20694	20695	20696	20697	20698	20699	20700	20701	20702	20703	20704	20705	20706	20707	20708	20709	20710	20711	20712	20713	20714	20715	20716	20717	20718	20719	20720	20721	20722	20723	20724	20725	20726	20727	20728	20729	20730	20731	20732	20733	20734	20735	20736	20737	20738	20739	20740	20741	20742	20743	20744	20745	20746	20747	20748	20749	20750	20751	20752	20753	20754	20755	20756	20757	20758	20759	20760	20761	20762	20763	20764	20765	20766	20767	20768	20769	20770	20771	20772	20773	20774	20775	20776	20777	20778	20779	20780	20781	20782	20783	20784	20785	20786	20787	20788	20789	20790	20791	20792	20793	20794	20795	20796	20797	20798	20799	20800	20801	20802	20803	20804	20805	20806	20807	20808	20809	20810	208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GOVERNMENTDEFENDANTSERROR IN DEFENDANTS'
TOTAL

	<u>Cash</u>	<u>Checks</u>	<u>Undetermined</u>	<u>Total</u>	<u>Cash</u>	<u>Miscellaneous</u>	<u>Total</u>
1050 Chemical Dollar East New York Ensignant Greenwich Total	1,190.00	35.00		1,225.00	582.72	582.72	-642.28
1052 Chemical Dollar East New York Ensignant Greenwich Total	12,018.00	2,335.26	300.00	14,653.26	11,550.00	16,200.45	+13,097.19
1070 Chemical Dollar East New York Ensignant Greenwich Total	4,550.00	2,684.43	7,234.43	4,550.00	7,234.43	11,784.43	+4,550.00
1071 Chemical Dollar East New York Ensignant Greenwich Total	1,214.62	2,975.16	4,189.16	400.00	4,189.16	4,589.16	+400.00
		1,220.40			1,220.40	1,220.40	
					\$5,809.56		\$400.00

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GOVERNMENT

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As shown above, defendants' account states that the total amount of deposits in the Glasser accounts during 1969-70 was \$14,744.23 or \$16,521.70 more than the correct total for those years of \$27,750.45. Defendants' account shows total deposits in the Chemical Bank account during 1969 of \$27,750.45, with \$11,350 in cash deposits and \$16,200 in miscellaneous deposits. In the Chemical Bank account during 1970 of \$14,633.25, defendants account shows total deposits of \$13,071.19 more than the actual total deposits for 1970 of \$14,633.25, composed of \$11,350 in cash deposits and \$12,723.19 in miscellaneous deposits.

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The source of the 1970 error is easy to see. While defendants' accountant purports to calculate the cash and miscellaneous deposits separately and then total the two, he includes all of the cash deposits in the miscellaneous total with the result that the combined total is in error in the amount of the cash deposits -- or \$4,500.00. Most of the 1969 error also results from including the cash deposits in the miscellaneous column. However, other adjustments are also necessary. Defendants' accountant omits the May 12, 1969, cash deposit of \$200.00 and the November 5, 1969, cash deposit of \$300.00 from his cash total; second, the first quarter miscellaneous entry erroneously includes two credit entries totaling \$499.00 for a transfer of \$483.50 from another account and refunds of service charges totaling \$15.50; third, the second quarter miscellaneous total overstates the total of all deposits by \$35.00 for an unknown reason; and fourth, the third quarter miscellaneous total overstates the total of all deposits in that quarter by \$373.19 for an unknown reason.

MISCELLANEOUS FACTUAL ERRORS IN AFFIDAVITS
SUBMITTED BY DEFENDANTS' COUNSEL

Affidavit of Edward Brodsky

<u>Page</u>	<u>Statement</u>	<u>Error</u>
3	"Glasser's testimony, elicited by the Government under a grant of complete immunity, was as follows: (1) That he was paid \$150.00 on four separate occasions by Mr. Schwartzbaum, of which he gave one-half to Charles Hoff . . ."	Mr. Glasser testified (a) that he received payments from Schwartzbaum on three occasions and (b) that the amount of each payment from Schwartzbaum to him was \$300.
4	"He withdrew from a claim that he made that money was being paid to Charles Hoff, a union official, and reinstated that claim after the prosecutor showed him a memorandum which the prosecutor had prepared of an interview with Glasser (Tr. 191-200, 222-228)."	Mr. Glasser's testimony never varied that he gave Charles Hoff one-half of each of the payments he received from Schwartzbaum.
4	"At the trial of the union officials, counsel for the defendants had subpoenaed bank records which led to the disclosure that Glasser had financial assets in excess of one hundred thousand dollars."	Mr. Glasser testified at the Stofsky trial that he had financial assets in excess of \$100,000 in response to cross-examination concerning entries in his income tax returns.
5	"Following the instant trial (A. 45), defense counsel learned about the bank records which revealed Glasser's cash deposits."	See Exhibit 11 to this Affidavit.
12	"The financial information which we were given indicates that the first payments received go back to only to 1964 not to 1962."	The bank records for Mr. Glasser's accounts made available to defendants' counsel show deposits at the Dollar Savings Bank in 1961 and at both the Migrant Savings Bank and The Greenwich Savings Bank in 1962.

Affidavit of Elkan Abramowitz

In this connection, it must be remembered that the government, during the investigative stage of these proceedings, conducted full tax audits of the defendants as revealed in the 3500 material -- audits which revealed nowhere near this kind of net worth."

The defendant's evasion case was based on the failure to report as income the specific illegal payments alleged in other counts of the indictment. The Internal Revenue Service did not conduct "full tax audits" of the Stofsky defendants.

A 224

VIA AIR MAIL
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DEPARTMENT OF JUSTICE

TO

DATE: September 3, 197-

FROM : JOHN C. SABETTA, V. THOMAS FRYMAN, JR.
Assistant United States Attorneys

SUBJECT: United States v. Stofsky; United States v. Schwartzbaum
Further Interview with Jack Glasser

On Friday, August 23, we interviewed Jack Glasser at the Federal Building in Miami, Florida, and reviewed with him further financial records which we had obtained. The interview began at approximately 6 p.m. and concluded at approximately 8:30 p.m. Mrs. Glasser was in the hospital last week, and we were not able to interview her.

1969 Income and Deposits

We asked Mr. Glasser about the deposits shown by the Chemical Bank records, particularly for the year 1969 when the Glassers deposited \$14,653.26 into their account there: \$12,018.00 in cash, \$2,335.26 in checks and \$300.00 in one or the other. Those deposits added to the deposits and interest in 1969 in the savings accounts of Mr. and Mrs. Glasser totalled \$42,921.37, or \$6,657.75 more than the \$36,263.62 total of funds which we calculated that Mr. Glasser received in 1968 based on our earlier interviews.

The largest cash deposit in the Chemical account, \$4,500 on January 27, 1969, Mr. Glasser believes came from cash received from manufacturers in late 1968 which he had held in his safe deposit box. Mr. Glasser had previously told us that he had received substantial sums of money from manufacturers in December 1968, but the bank records do not show very substantial deposits in any of his accounts during that month. In contrast, the records of the Glassers' savings accounts show cash deposits of \$2,850 in December 1967 and cash deposits of \$6,000 in December 1969. The Chemical Bank records are not available for December 1967; the Chemical Bank records for December 1969 show cash deposits of \$400.

Mr. Glasser said he could not think of any sources of income other than those he had already described to us to account for

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the other deposits in 1969. We pointed out to him the following correlation between certain cash deposits and stock purchases shown on records from E. Lowitz & Co.:

January 24, 1969, purchased stock for \$3,271.25;
January 27, 1969, deposited \$4,500 in cash in
Chemical account; January 29, 1969, E. Lowitz
& Co. credited the Glasser account with a check
from Chemical Bank for \$3,271.25.

April 17, 1969, purchased stock for \$10,380.50;
April 21, 1969, deposited \$1,500 in cash in
Chemical account; April 22, 1969, E. Lowitz &
Co. credited the Glasser account with a check
from Chemical Bank for \$1,500.50 (balance of
\$8,880.00 paid by check from The Greenwich Savings
Bank).

May 26, 1969, purchased stock for \$3,650; May
28, 1969, deposited \$3,850 in cash in Chemical
account; June 2, 1969, E. Lowitz & Co. credited
the Glasser account with a check from Chemical
Bank for \$3,650.00.

The relation between the stock purchases and the cash deposits did not refresh Mr. Glasser's recollection of any other source of funds.

If the January 27, 1969, cash deposit is subtracted from the total 1969 deposits because it is properly attributable to 1968 income, the 1969 deposits then exceed the funds which we calculated that Mr. Glasser received in 1968 by \$2,157.75. A possible explanation of this gap is that our earlier estimate was based on a conservative treatment of the 1969 income disclosed in the earlier Glasser interviews: items about which Mr. Glasser expressed doubts were eliminated and a lower figure was used where he gave a range of figures for an item. If questionable items are included and higher figures are used, the gap disappears.

Funds in Savings Accounts and Inheritance

While in our earlier interviews, Mr. Glasser had only told us about payments from manufacturers beginning in 1964, he stated on August 23 that he first accepted money from a fur manufacturer to arrange a payoff to a union official shortly before

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March 18, 1962, when he suffered a heart attack and was away from his job for several months. He first accepted such payments from Mr. Greenberg, and he believes his heart attack was caused by his shock in learning shortly before the heart attack that Mr. Greenberg was discussing something on the telephone with Mr. Greenberg, Glasser's boss. Glasser feared that Mr. Greenberg had told Mr. Greenberg about the payment, but he later learned that Mr. Greenberg had not.

Mr. Glasser said that as he received funds from the manufacturers in this early period he deposited his portion of them in his accounts at the Greenwich and Emigrant banks. Before looking at the bank records, he said they would show deposits for a brief period before March 18, 1962, a gap of several months with no deposits while he was ill, and increasing deposits thereafter. The Greenwich and Emigrant records show several deposits from February 16, 1962, through March 16, 1962; no deposits thereafter until May 22, 1962; and frequent cash deposits beginning May 22, 1962. The Dollar Savings Bank records show the following deposits: 12/26/61, \$1,100; 4/20/62, \$500; 5/15/62, \$400.

Mr. Glasser maintained that Mrs. Glasser had inherited \$30,000 to \$40,000 in jewelry and other assets including cash and bonds from her parents. He was inexact about the value of each category of items which Mrs. Glasser had inherited and about what had happened to the inheritance. He said that he and Mrs. Glasser had savings accounts prior to 1960 totalling about \$10,000, and part of these moneys may have come from Mrs. Glasser's parents. He remembered savings accounts at the Dollar Savings Bank and First Federal Savings and Loan which was located at 170th Street.

The statement in our papers in opposition to the new trial motions that approximately \$40,000 to \$50,000 of the moneys in the savings bank accounts came from Mrs. Glasser's parents appears to be high and incorrect.

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EXHIBIT 8

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May 10, 1974

Chemical Bank
Attention: John B. Wynne, Esq.
20 Pine Street
New York, New York

We COMMAND YOU that in business and expenses being had and to be incurred at the GRAND INQUEST of the body of the people of the United States for the Southern District of New York, at a District Court to be held at Room 1401, United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 12th day of May 1974, at 10:00 o'clock in the forenoon, to testify and give evidence in regard to an alleged violation of Title 18, United States Code, Section 371

and not to depart the Court without leave thereof, or of the United States Attorney, and that you produce at the time and place aforesaid the following: for Jack Glaser and/or Betty Glaser for the period beginning January 1, 1960, through December 31, 1973:

- (1) with respect to any checking accounts, copies of (a) all monthly statements, (b) all deposit slips, (c) all cancelled checks;
- (2) with respect to any savings accounts, (a) a transcript showing all deposits, withdrawals and interest payments, (b) copies of all deposit slips, (c) copies of all withdrawal slips;
- (3) with respect to any loans, copies of loan records showing (a) date and amount of loan, (b) date and amount of interest payments, and (c) date and amount of principal repayments.

NOTE: These documents are to be delivered to the Grand Jury by Mr. Wynne or an alternate duly designated representative on the date indicated unless an adjournment or alternate production procedure is requested and approved by the United States Attorney's Office.

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

DATED: NEW YORK, N. Y. May 10, 1974

PAUL J. CURRAN

United States Attorney for the
Southern District of New York

J. Clark

NOTE: Report at Room 150. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 450, upon each day on which you attend Court as a witness.

Assistant JOHN C. SABETTA Room 423
Telephone: (212) 264-6423

UNITED STATES
SOUTHERN DISTRICT COURT
NEW YORK

CHIEF CLERK

WE COMMAND you, after all business and excuses being laid aside, to appear and attend before the GRAND INQUIRY or the body of the people of the United States of America for the Southern District of New York, at the District Court to be held at Room 1404 in the United States Courts House, Foley Square, in the Borough of Manhattan, City of New York, on the 22nd day of May 1974, at 10:00 o'clock in the fore noon, to testify and give evidence in regard to an alleged violation of **Section 371, Title 18, United States Code,**

and not to depart the Court without leave thereof, or of the United States Attorney, and that you produce at the time and place aforesaid the following:

With respect to any and all certificates of deposit and time accounts in the name of Jack Glasser and/or Betty Glasser of 1515 McCombs Road, Bronx, New York, and 98-25 Horace Harding Expressway, Queens, New York, or as trustees for others, for the period 1960-1972, the following documents:

1. a transcript of the account, containing dates, withdrawals, deposits, interest and a running balance;
2. both sides of any and all deposit and withdrawal slips;
3. both sides of any and all tellers checks;
4. copies of any correspondence and credit files; and
5. records of any certificates of deposit, reflecting the amount, date purchased, rate of interest and maturity date.

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

DATED: NEW YORK, N.Y. May 9, 1974

Roger J. McHugh
Clerk

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

Note: Report at Room 1404. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 450, upon each day on which you attend Court as a witness.

Assistant JOHN C. SABETTA Room 423
Telephone: (212) 264-6423

1403

22nd May

74 - 10:00

fore

Title 13, United States Code, Section 371

with respect to any and all certificates of deposit and time accounts in the name of Betty Glasser and/or Jack Glasser of 93-25 Horace Harding Expressway, Queens, New York, or as trustees for others, for the period 1950-1972, the following documents:

1. a transcript of the account containing dates, withdrawals, deposits, interest and a running balance;
2. both sides of any and all deposit and withdrawal slips;
3. both sides of any and all tellers checks.
4. copies of any correspondence and credit files; and
5. records of any certificate of deposit, reflecting the amount, date purchased, rate of interest and maturity date.

May 9, 1974

PAUL J. CURRAN

J. G. CURRAN

- 423

Telephone (212) 224-6423

New York, New York

WITNESSMEN: That, and all business and excuses being laid aside, you will attend and appear at the GRAND INQUIRY of the body of the people of the United States of America, to be held in the District of New York, at a District Court to be held at Room 1404 in the Bronx Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 22nd day of May, 1974, at 10:00 o'clock in the fore noon, to testify and give evidence in regard to an alleged violation of Section 371, Title 18, United States Code,

and not to depart the Court without leave thereof, or of the United States Attorney, and that you produce at the time and place aforesaid the following:
With respect to any and all certificates of deposit and time accounts in the name of Jack Glasser and/or Betty Glasser of 1515 McCombs Road, Bronx, New York and 98-25 Horace Harding Expressway, Queens, New York, or as trustees for others, for the period 1960-1972, the following documents:

1. a transcript of the account, containing dates, withdrawals, deposits, interest and a running balance;
2. both sides of any and all deposit and withdrawal slips;
3. both sides of any and all tellers checks;
4. copies of any correspondence and credit files;
5. records of any certificate of deposit, reflecting the amount, date purchased, rate of interest and maturity date.

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

DATED: NEW YORK, N. Y. May 9, 1974

Raymond F. Fitzgerald
Raymond F. Fitzgerald
Clerk.

PAUL J. CURRAN
*United States Attorney for the
Southern District of New York*

NOTE: Report at Room 150. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 150, upon each day on which you attend Court as a witness.

Attn: JOHN C. CARETTA Room 423
Telephone: (212) 264-6423

JCS:ccc

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United States District Court
SOUTHERN DISTRICT OF NEW YORK

TO The Greenwich Savings Bank
35th Street and 6th Avenue
New York, New York

COPYRIGHT 1974

WE COMMAND YOU that all business and expenses being laid aside, you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court to be held at Room 1404 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 22nd day of May 1974, at 10:00 o'clock in the fore noon, to testify and give evidence in regard to an alleged violation of **Section 371, Title 18, United States Code,**

and not to depart the Court without leave thereof, or of the United States Attorney, and that you produce at the time and place aforesaid the following:

With respect to any and all certificates of deposit and time accounts in the name of Jack Glasser and/or Betty Glasser of 9-25 Horace Harding Expressway, Queens, New York and 1515 McCombs Road Bronx, New York, or as trustees for others, for the period 1960-1974, the following documents:

1. a transcript of the account containing dates, withdrawals, deposits, interest and a running balance;
2. both sides of any and all deposit and withdrawal slips;
3. both sides of any and all tellers checks;
4. copies of any correspondence and credit files; and
5. records of any certificate of deposit, reflecting the amount, date purchased, rate of interest and maturity date.

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

DATED: NEW YORK, N. Y. May 9, 1974

Payment of witness fee

Clerk.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

Please Report at Room 150, in order to swear your witness fee will be paid to you by the Clerk when you return this summons and present the name of the United States Attorney, Paul J. Curran, from time to time each day on which you attend Court as a witness.

Assistant U. S. Attorney - Room 423
Telephone: (212) 264-6423

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EXHIBIT 9

June 24, 1974

Mr. Qasidri, Esq.
U.S. Department
of Justice
One Franklin
West Village
Midtown District
New York, New York 10005

Re: Grand Jury Subpoena for records of
Jack Glasser and Betty Glasser

Dear Mr. Qasidri:

In accordance with our recent telephone conversation I am sending herewith a copy of each of the account ledgers which Chemical Bank has produced pursuant to the above-described subpoena.

As I stated in our conversation the subpoena also calls for production of a copy of every check and deposit ticket for any account of Jack Glasser and/or Betty Glasser.

Please telephone me or John C. Calabrese (264-6423) about a date for producing these further records.

Very truly yours,

PAUL J. GOLDBECK
United States Attorney

By:

V. G. COOPER, A.A.
Assistant United States Attorney
Telephone 2-1177

Enclosures

A 237

JCG:jcm

74-1632

July 10, 1974

Victor Quadri, Esq.
Legal Department
Chemical Bank
26th Floor
20 Pine Street
New York, New York 10005

Re: Grand Jury Subpoena for records
of Jack Glasser and Betty Glasser

Dear Mr. Quadri:

In accordance with your recent request, enclosed please find additional, and I believe more legible, copies of various account ledgers of Jack and Betty Glasser.

Very truly yours,

PAUL J. CUMMINS
United States Attorney

By:

JOHN C. SAWYER
Assistant United States Attorney

Enclosure

A 238

EXHIBIT 10

UNITED STATES OF AMERICA

GEORGE STACHEY, CHARLES JOHN,
AL GOLD and CLIFFORD LAGOLIN,

Defendants.

UNITED STATES OF AMERICA

AFFIDAVIT OF
VICTOR QUADRI

- v - : 73 Cr. 916 (LW)

KARL "Jack" SCHMIDTZBAUM,

Defendant. :

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.
SOUTHERN DISTRICT OF NEW YORK)

VICTOR QUADRI, being duly sworn, deposes and says:

1. I am a clerk employed in the Legal Department of Chemical Bank ("Bank"), and I make this affidavit at the request of Assistant United States Attorney John C. Sabetta, in connection with further new trial motions in the above-mentioned proceedings.

2. My job responsibilities include preparation of responses by the Bank to subpoenas issued to it. On or about May 13, 1974, at its offices located at 20 Pine Street, New York, New York, the Bank was served with a grand jury subpoena duces tecum dated May 10, 1974, which required the Bank to produce to the federal grand jury of this District certain Bank records pertaining to the accounts of Jack and Betty Glasser. A copy of that subpoena was forwarded to the law office of John C. Sabetta, located at 100 Greenwich Street, New York 10013. Thereafter certain documents received in that subpoena were furnished by that law office, in turn, had then produced to the grand

States Attorney's Office of this District on May 21, 1974. Subsequently in August 1974, additional documents specified in that subpoena were forwarded to me by Bank officials at the Lefrak #127 branch and I, in turn, had them produced to the United States Attorney's Office of this District on August 16, 1974.

3. The Bank was not able to produce certain documents called for in the subpoena including (1) monthly statements for months prior to December 1968, which have been destroyed; (2) monthly statements for January 1972 through May 1972, which have been lost; and (3) deposit slips for deposits included in those monthly statements, which cannot be located without the statements.



VICTOR QUADRI

Sworn to before me this
11 day of October, 1974.



NOTARY PUBLIC

CLARENCE H. FISHER
Notary Public, State of New York
No. 24549
Qualified in Nassau County
Certificate filed in Nassau County
Commission Expires March 30, 1975

A 241

EXHIBIT II

Form 1
G-2, G-3

JCS:km U.S.

73-6750

1/26/75

DEPARTMENT OF JUSTICE

TO : F.B.I.

DATE: August 27, 1974

FROM : JOHN C. CALICUTTA
Assistant United States AttorneySUBJECT: Re: Telephone Call with Elkan Abramowitz, Esq.,
of August 21, 1974

On August 21, 1974 Abramowitz returned my call of the prior day. I asked him to relate again what he had told me in May 1974 of his meeting with William Esbitt -- trial counsel for Karl "Jack" Schwartzbau -- in late March 1974. Abramowitz advised as follows:

Sometime during the last two weeks of March 1974, Esbitt requested to meet with Abramowitz to discuss possible trial tactics for defendant Schwartzbau at his upcoming trial which was to begin April 1, 1974. Sometime in late March, Esbitt met with Abramowitz and his associate, Michael Sonberg, at Abramowitz' office. There Esbitt reviewed with the others, inter alia, possible lines of cross-examination of Jack Glasser -- who was to be the government's principal witness.

At some point during the meeting Abramowitz advised Esbitt of his intention to file a new trial motion in the union case, based on post-trial discovery of bank records of the Glassers evidencing large cash deposits from 1967-70 in their savings accounts, which contradicted the Glassers' trial testimony regarding the source of the \$120,000 in those savings accounts. Abramowitz told Esbitt that they had the documents in their physical possession and that they were available to Esbitt. Esbitt said "okay", but never followed up the offer and never did request copies of the documents in question. Abramowitz advised me during this call that it was clear from his meeting with Esbitt that the latter had read at least that portion of the transcript of the union trial which contained Glasser's testimony and was familiar with it.

JCS:ka
73-0753

August 27, 1974

Re: Telephone Call with Elkan Abramowitz, Esq.,
of August 21, 1974 (Continued)

Abramowitz further advised me that after speaking to me in May 1974 and advising me generally of the substance of his meeting with Esbitt, he telephoned Esbitt and told him the substance of his conversation with me. According to Abramowitz, Esbitt said he remembered the fact of March 1974 meeting, could not deny the accuracy of what Abramowitz had told me, but said he had no recollection of Abramowitz ever mentioning to him at that meeting the newly discovered information regarding the cash deposits in the Glassers' accounts.

J. C. S.
J. C. S.

A 244

LETTER OF JOHN C. SABETTA, ESQ.
(OCTOBER 31, 1974), WITH ATTACHMENT

JCS:mr

73-0753

October 31, 1974

Honorable Lawrence W. Pierce
United States District Judge
United States Courthouse
Room 2601
New York, New York 10007

Re: United States v. Stofsky, et al., 73 Cr. 614;
United States v. Schwartzbaum, 73 Cr. 616

Dear Judge Pierce:

I am submitting herewith two affidavits of mailing pertaining to service of my affidavit, sworn to on October 26, 1974 and filed in opposition to defendants' recent new trial motions, on Messrs. Stephen Barasch and Edward Brodsky, counsel for defendants Charles Hoff and Clifford Lagoles, and Karl "Jack" Schwartzbaum, respectively. I respectfully request that these affidavits of service be filed in Stofsky and Schwartzbaum, respectively. Proof of service on counsel for defendants George Stofsky and Al Gold is evidenced by acknowledgment of the same on the back of one of the originals of the government's affidavits already filed with the Court.

Also, please note that because of a mechanical error the last line and one-quarter of page 10 of my recently filed affidavit was inadvertently omitted. I am enclosing the original and one copy of a fully corrected page 10 with the request that it be substituted for page 10 of the duplicate originals earlier filed with the Court.

JCS:mr
73-0753

Honorable Lawrence W. Pierce

-2-

October 31, 1974

Finally, my review of the affidavit reveals three typographical errors. Page 5, last line, should read "pertinent" instead of "pertient"; page 11, line 8, should read "June 1972" instead of July 1972"; and page 12, line 20, should read "July 10, 1974" instead of July 19, 1974."

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
JOHN C. SABETTA
Assistant United States Attorney
Telephone: (212) 791-1920

Enclosures
cc: w/ enclos.

Elkan Abramowitz, Esq.
Weiss Rosenthal Heller & Schwartzman
295 Madison Avenue
New York, New York 10017

Paul K. Rooney, Esq.
Rooney & Evans
521 Fifth Avenue
New York, New York 10017

Stephen Barasch, Esq.
27 East 39th Street
New York, New York 10016

Edward Brodsky, Esq.
Goldstein, Shames & Hyde
655 Madison Avenue
New York, New York 10021

JCH:bj
73-0750
d-424

A 247

requires a new trial. That charge is contradicted by the pertinent facts which are set forth below.

17. On April 22, 1974, counsel for defendants in Stofsky served papers in support of a new trial motion based on certain bank records of Jack and Betty Glasser which they had subpoenaed, part during and part after the Stofsky trial. On May 21, 1974 counsel for Schwartzbaum served papers in support of a new trial motion based on the same records.

18. Following receipt of the papers in support of the original new trial motion in Stofsky, the government commenced an investigation of the allegations in these papers as well as a broader investigation of the fur manufacturing industry. As discussed in my affidavit sworn to on May 23, 1974, and previously submitted in opposition to defendants' first new trial motion in Stofsky, government counsel interviewed Mr. and Mrs. Glasser on May 3, 6, 13 and 14, 1974. In addition grand jury subpoenas were issued on May 9 and 10, 1974, for additional financial records of Mr. and Mrs. Glasser, including subpoenas for records from Chemical Bank and the Dollar Savings Bank as well as for records from The East New York Savings Bank, Emigrant Savings Bank and The Greenwich Savings Bank, which covered a broader time period than had been specified in the earlier subpoenas issued by the Stofsky defendants. Copies of the grand jury subpoenas directed to those five institutions are attached hereto as Exhibit 8. In response to those subpoenas, The Greenwich Savings Bank and the Emigrant Savings Bank forwarded documents with letters dated May 14 and May 22, 1974, respectively--including documents for the years 1962 through 1966; representatives of Chemical Bank and The East New York Savings Bank delivered documents to me on May 21, 1974; and a representative of the Dollar Savings Bank delivered documents to me on May 22, 1974.

A 248

REPLY AFFIDAVIT OF EDWARD BRODSKY, ESQ.
(November 11, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

: 73 Cr. 616
(L.W.P.)

Plaintiff, :

-against-

KARL SCHWARTZBAUM,

Defendant. :

-----x
STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

AFFIDAVIT

OFFICE COPY	
SEARCHED	INDEXED
SERIALIZED	FILED
APR 19 1975	1975
SEARCHED	INDEXED
SERIALIZED	FILED
APR 19 1975	
INVESTIGATOR	

EDWARD BRODSKY, being duly sworn, deposes

and says:

I am a member of the firm of Goldstein, Shames & Hyde, counsel for the defendant Karl "Jack" Schwartzbaum in the above-captioned case. This affidavit is submitted in reply to the affidavit of John C. Sabetta, dated October 26, 1974, and in support of the defendant's motion, pursuant to Rule 33 of the Federal Rules of Criminal Procedure and the Fifth Amendment to the United States Constitution, for an order setting aside the verdict against the defendant and granting him a new trial on the ground of newly-discovered evidence. In the alternative, it is requested that the defendant be granted an evidentiary hearing for the purposes of developing further facts in support of this application.

A. The Government's Suppression
Of Evidence And The Need For
A Hearing

Before the defendant's first motion for a new trial, the Government privately interviewed Glasser at length. During that interview, Glasser allegedly made a variety of admissions, and also made various claims concerning his alleged sources of income. Neither the defense nor the Court has had the benefit of any sworn testimony or writing from Mr. Glasser with regard to discoveries which prompted the initial motion for a new trial. Instead, the defense and the Court have only had the benefit of the undocumented, hearsay allegations of Government counsel.

Now, Glasser has admitted that he lied in the statements given to the Government attorneys following the first motion for a new trial. While some of the alleged admissions are now belatedly offered to the Court and to the defense through Mr. Sabetta's affidavit, we are again deprived of any sworn testimony or statement from Glasser with regard to the more recent revelations.

Glasser's successive admissions of perjury and false statements, secured through the persistent efforts of the defense to ascertain the truth, reveal that the Government has been either unable or unwilling to examine Glasser with any firm resolution to reach the truth of the matter. Indeed, Mr. Sabetta's most recent affidavit is replete with speculation, seeking to offer legitimate possibilities for many thousands of dollars of Glasser's income. Despite Glasser's acknowledged prior perjuries, the Government appears intent upon giving him the benefit of every doubt. Additionally, while acknowledging that it was one of Glasser's practices to accumulate his ill-gotten gains in a safe deposit box and later deposit the same in his bank accounts, the Government, nevertheless, has the audacity or naivete to suggest that any bank deposits made by Glasser after he left the fur industry are not relevant to this inquiry, even though there has been no explanation or documentation with regard to the sources of such deposits. The absurdity of that contention speaks for itself.

There are several issues which may be resolved by a hearing:

- 1) Does Glasser have any other bank accounts, safety deposit boxes or hidden assets?

- 2) What, if any, proof can Glasser offer to substantiate his claim -- made now, but not at trial -- that he had other sources of income beyond his salary?
- 3) Can Glasser, now, remember telling Schwartzbaum that union officials were being "paid off" or, as is more likely, is Glasser now willing to admit that due to the number of different manufacturers he was dealing with and the period of time covered by those deals, he has no specific recollection of what he told to whom?
- 4) Did Glasser keep for himself all the money he received and not give any to union officials? If so, no crime was committed in this case.
- 5) In light of the large number of manufacturers that Glasser is now apparently saying he received money from, will he still testify that he has a specific recollection of receiving money from the defendant in this case?

Glasser was able to trade his testimony against union officials for immunity. It was certainly within his interest to lie in doing so since he was still subject to prosecution for income tax evasion. When the amounts of his ill-gotten gains were thought to be small, his story was far more favorable than it is now when facts of his true income have been revealed. He should now be made to explain, under oath and subject to cross-examination, how it was possible for him to retain so much while paying one-half or two-thirds of the "take" over to union officials. There are two possibilities:

- (a) That Glasser kept most of the money for himself; or,
- (b) He shared with union officials on some of the deals, but not on others.

It is quite possible that he cannot recall whether he shared any of the monies which he received from Schwartzbaum or that he has a specific recollection of not sharing any money received from Schwartzbaum.

It should be determined what, if anything, Glasser told Government counsel prior to the trial or during trial about the subject matter of the newly-discovered evidence.

Government counsel has now admitted that the United States Attorney's office embarked upon a tactical decision to withhold evidence from the defense and from the Court with regard to more than \$33,000 of unexplained deposits in the Chemical Bank, more than \$19,000 of which was in cash. Practically all of these deposits were made during the period covered by the indictment. Aside from the normal considerations entitling the defense to cross-examine witnesses under oath and in the presence of a finder of the fact, the Government's demonstrated willingness to conceal facts as well as its demonstrated inability to arrive at the true facts, all require a hearing at which Mr. Glasser, Government counsel and possibly others will be required to testify.

In addition, the Government's conduct in this matter, we submit, strengthens our contention that the previously hidden memorandum of the Government's interview with Glasser should be disclosed to the defense. Finally, that portion of the memorandum of the Government's most recent interview with Glasser, which is not included in the Government's reply papers, should also be provided to the defense (Sabetta affidavit, Exhibit "7"). Page four of that memorandum is blank and I am informed by Mr. Sabetta that material in the memorandum is not being provided to us because the Government takes the position that it is not pertinent to our investigation and because it may prejudice a different investigation. At the very least, the Government memorandum should be shown to the Court and made a part of the record in this case.

B. The Government's Efforts To Minimize
The Most Recent Disclosures

The Government suggests that Glasser's deposits through the period 1960 to 1966 are irrelevant since they precede the period of time of his indictment. The facts are now known that Glasser perjured himself, as the Government now concedes. The fact of a witness' perjury is always relevant on the trial of a criminal case. Neither the defense nor, presumably, the Government had reason to believe, at the time of trial, that Glasser was perjuring himself with regard to the source and amount of his income. However, at trial, the scope of Glasser's recollection was one of the pertinent issues and if the extent of his perjury had been known, it would certainly have been beneficial to the defense.

The Government urges that Glasser's bank deposits during the period from 1971 to 1973 (over \$12,000 from unexplained sources) are irrelevant since Glasser had, by that time, left the fur industry. However, the first page of the memorandum of Government counsel's most recent interview with Glasser shows that Glasser accumulated payments in a safe deposit box and, thereafter, deposited the funds in his bank account. Therefore, any substantial and unexplained deposits made by Glasser, even after the period of his employment in the fur industry, are relevant to the present inquiry.

The Government urges that the discovery of almost \$100,000 in previously unrevealed income is insignificant. It acknowledges that Glasser's total income from undetermined sources is \$157,688.00. It then subtracts the amount of such income which was known at the time of the prior motion for a new trial (\$66,416) and arrives at a remainder of \$91,271.00. It then subtracts the allegedly irrelevant Chemical Bank deposits for the years 1971 through 1973 (\$12,117), and declares that "accordingly, the total gross deposits pertinent to the instant motions as shown by the 'new' bank records is \$79,153, less than one-half the amount defendants claim the 'new' bank records reveal" (Sabetta affidavit, page "7").

The fact is that these figures are approximately \$100,000 more than Glasser admitted to at the time of trial and more than twice that admitted on the prior motion for a new trial. At no point in the Government's papers does it come to grips with that solid fact.

C. Errors In Defense Computations

While it appears that certain errors (basically, the duplication of two items) were made by our accountant, those errors are insignificant in view of the substantial amounts conceded to be correct by the Government. The errors did not, to any extent, change the claim of what remains, i.e., that Glasser has, on many prior occasions, perjured himself and made false statements in an effort to minimize the nature and extent of his involvement in the case. At the time of trial, Glasser perjured himself in an effort to conceal the wide scope of his illicit dealings.

D. The Diligence of the Defense

It was only after the instant trial, when pressed by defense motions, that Government counsel sought and did obtain admissions from Glasser concerning the legitimate sources of those bank deposits which were then known. Even so, Government counsel was unsuccessful in securing the plain truth from Glasser. The known amounts of his bank deposits have now more than doubled. Nevertheless, the Government continues to claim that the defense, with the exercise of due diligence, would have uncovered all of these facts prior to or during the instant trial. In support of its contention in this regard, Mr. Sabetta advises this Court as follows:

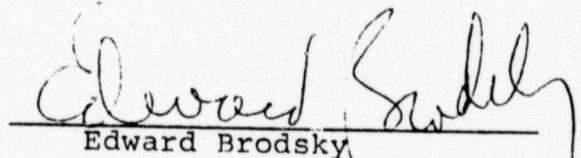
"That Elkan Abramowitz, attorney for the Stofsky defendants, has informed me that he met with Schwartzbaum's trial counsel, William Esbitt, prior to the Stofsky trial and told Mr. Esbitt that he had obtained bank records and accounts of Mr. and Mrs. Glasser showing deposits from 1967 through 1970 and that those records were available to Mr. Esbitt (Sabetta affidavit, page "3").

Submitted herewith are the affidavits of Mr. Abramowitz and Mr. Esbitt with regard to the alleged conversation. Mr. Esbitt, an attorney of established integrity, stated to this Court under oath that he has no recollection of receiving any such information from Mr. Abramowitz. He suggests several possibilities. The first is that due to his impaired hearing, he simply did not hear any of the statements directed to him; second, he may have been absorbed in the reading of a trial transcript and, therefore, was not paying attention to what may have been said by Mr. Abramowitz. Mr. Abramowitz' affidavit corroborates Mr. Esbitt's assertions in every respect. If the evidence in question had been known to Mr. Esbitt, it would surely have been used at the time of trial, there not being any apparent tactical reason for not doing so.

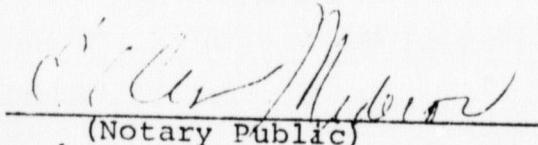
In addition, as Mr. Abramowitz' affidavit shows, Mr. Sabetta chose to omit from his memorandum the fact that Mr. Abramowitz said that in his opinion, Mr. Esbitt was not focusing on and did not hear the statements about cash payments made by Abramowitz.

Conclusion

For the reasons stated above, it is respectfully requested that defendant's motion for a new trial be granted. In the alternative, it is requested that an evidentiary hearing be granted on the issues presented herein. The defendant respectfully requests oral argument with respect to this motion.


Edward Brodsky
Edward Brodsky

Sworn to before me this
11th day of November, 1974


Ellen Mederos
(Notary Public)

ELLEN MEDEROS
Notary Public, State of New York
No. 31-7880535
Qualified in New York County
Commission Expires March 30, 1976

A 260

REPLY AFFIDAVIT OF WILLIAM ESBITT, ESQ.
(November 5, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
UNITED STATES OF AMERICA, : 73 Cr. 616
 (L.W.P.)

Plaintiff, :

-against- : AFFIDAVIT

KARL SCHWARTZBAUM, :

Defendant. :

- - - - - x
STATE OF FLORIDA) ss.:
COUNTY OF PALM BEACH)

WILLIAM ESBITT, being duly sworn, deposes
and says:

I am a member of the Bar of the State of New York and represented the defendant Karl Schwartzbaum ("Schwartzbaum") in the above-captioned case in the trial before the Honorable Lawrence W. Pierce. This affidavit is prepared in connection with a motion for a new trial made on behalf of the defendant.

In its answering papers to the motion for a new trial made on behalf of the defendant, the Government has referred to information received from Elkan Abramowitz about a conference I had with him. My recollection of that conference is as follows:

A 261a

I met with Mr. Abramowitz and an associate of his in March, 1974, before the commencement of the above-captioned case. My only purpose in meeting with them was to review portions of the transcript of the trial in the Stofsky case, which I did. I have no recollection of Mr. Abramowitz telling me, either in words or substance, anything about cash deposits to Glasser's account, which he discovered after the trial in his case. Nor do I have any recollection that Mr. Abramowitz informed me of his intention to file a new trial motion in his case.

At no time did I ask Mr. Abramowitz for any details of the facts which Mr. Abramowitz is alleged to have informed me concerning cash deposits made by the witness, Jack Glasser. This is borne out and supported by Mr. Abramowitz who, I am informed, recollects that I did not respond to the information which he claims to have given me. Mr. Abramowitz will confirm that I acted as though I had not heard this information and it is my present recollection and was my recollection at the time I learned about Mr. Abramowitz' statements about a motion for a new trial, that I had never heard this information from Mr. Abramowitz.

It is also a fact that I am hard of hearing and have been hard of hearing for several years, which may have accounted for the fact that I did not respond to the statements which Mr. Abramowitz states he made to me at at the time of that meeting. Furthermore, I was intent upon reading a transcript of the union trial, in which Mr. Abramowitz was defense counsel, rather than focusing on what Mr. Abramowitz may have said. My prime purpose in going to Mr. Abramowitz' office was to read the transcript rather than to discuss the issues with Mr. Abramowitz.

William Esbitt
William Esbitt

Sworn to before me this
5th day of November, 1974.

Marie A. McCarthy
(Notary Public)

Notary Public, State of Maryland
My Commission Expires March 10, 1977
Family American Life & Casualty Co.

A. M. McCarthy
Notary
Public
"at Large"

A 263

REPLY AFFIDAVIT OF ELKAN ABRAMOWITZ, ESQ.
(November 5, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, : 73 Cr. 616
 (L.W.P.)

Plaintiff, :

-against- : AFFIDAVIT

KARL SCHWARTZBAUM, :

Defendant. :

----- x
STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

ELKAN ABRAMOWITZ, being duly sworn, deposes
and says:

I am a member of the Bar of the State of New York and co-counsel to the defendants in what has been referred to as the Stofsky case. This affidavit is prepared to set forth certain facts of my meeting in March, 1974, with William Esbitt, trial counsel for Karl "Jack" Schwartzbaum, and my subsequent telephone conversation with Assistant United States Attorney John C. Sabetta about that meeting.

Mr. Esbitt came to my office in March, 1974. He told me that he wanted to examine the trial transcript in the Stofsky case and spent most of his time doing that. My conversation with Mr. Esbitt about cash payments to Jack Glasser did not last more than thirty seconds.

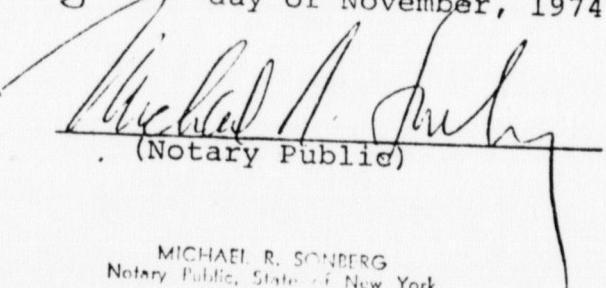
I told Mr. Esbitt that we had evidence of cash payments to Jack Glasser, which we had discovered after the trial in the Stofsky case. I have no recollection of telling Mr. Esbitt that we planned to file a motion for a new trial, as is alleged in the affidavit of John C. Sabetta, sworn to August 27, 1974.

When I related this conversation to Mr. Sabetta, I told him that it was my opinion that Mr. Esbitt was not focusing on, did not hear and did not comment on the statements which I made to him concerning the cash payments. Mr. Sabetta did not include that aspect of our conversation in his affidavit.

Elkan Abramowitz
Elkan Abramowitz

Sworn to before me this

5th day of November, 1974


(Notary Public)

MICHAEL R. SONBERG
Notary Public, State of New York
No. 31-910725
Qualified in New York County
Commission Expires March 30, 1976

A 266

LETTER OF JOHN C. SABETTA, ESQ.
(November 15, 1974)

A 267

OFFICE COPY

BY MAIL BY HAND

VTF, Jr.:JCS:ka

73-0753

SEARCHED

INDEXED

FILED 11-15-74

November 15, 1974

Honorable Lawrence W. Pierce
United States District Judge
United States Courthouse
Room 2601
Foley Square
New York, New York 10007

Re: United States v. Stofsky, et al.,
73 Cr. 614;
United States v. Schwartzbaum,
73 Cr. 616

Dear Judge Pierce:

The affidavit of Elkan Abramowitz, sworn to on October 10, 1974, and previously submitted in support of the present motion of defendants Stofsky and Gold, argued at page 9 that it was inconceivable that the union defendants could have received additional large payoffs from fur manufacturers because the Government, during its investigation, had conducted "full tax audits" of the union defendants and would have discovered any such monies if they existed. I noted in Exhibit 6 to my affidavit, sworn to on October 26, 1974, that Mr. Abramowitz's statement that the Government had conducted "full tax audits" was erroneous. In his most recent affidavit, sworn to on November 11, 1974, Mr. Abramowitz continues to claim on pages 6-7 that the Government conducted such "full tax audits"; in support of that claim he attaches to that affidavit as Exhibit A copies of certain audit reports which the Government had made available to him at the time of the Stofsky trial.

VTF,Jr.:JCS:ka
73-0753

Honorable Lawrence W. Pierce

November 13, 1974

To clarify what kind of audits the Internal Revenue Service conducted with respect to the union defendants, I am submitting herewith the original and a duplicate original of an affidavit of Robert E. Maronecilli, the Revenue Agent who conducted the audits, with the request that one of the affidavits be filed in Stefsky and the other in Schertshaum. In that affidavit, Mr. Maronecilli describes generally the nature of the audits he conducted as well as the investigative steps he did not take. As Mr. Maronecilli's affidavit shows, the Internal Revenue Service has not made any "full tax audit" of the union defendants designed to uncover any additional payoffs received by them from union manufacturers.

In my letter to you of October 26, 1974 I discussed Judge Bauman's recent unreported decision in United States v. Roemer, 72 Cr. 782 (S.D.N.Y., Aug. 15, 1974), and I enclosed a copy of his opinion which considered a variety of charges of alleged Government misconduct. Judge Bauman, in organizing his opinion, separated his analyses of charges of alleged Government misconduct prior to and during the Roemer trial from his analyses of alleged Government misconduct after that trial. After setting forth a description of the matters raised by the motion, Judge Bauman stated at page 6 of the opinion:

"Roemer presents four separate arguments concerning alleged government misconduct prior to and during the trial. (Two other arguments claiming post trial suppression will be considered in later sections of this opinion.)"

VTF,Jr.:JCS:ka
73-0753

Honorable Lawrence W. Pierce

November 15, 1974

He then discussed the alleged governmental misconduct "prior to and during the trial" through the end of Section IV of his opinion on page 20. At the beginning of Section V on page 20, he stated:

"The foregoing discussion disposes of defendant's various claims of pretrial suppression and perjury. I now turn to his charges of post-trial suppression."

Portions of his discussion of the principles applicable to the charges of "post-trial suppression" are quoted on page 3 of my letter to you of October 26, 1974.

While the memorandum submitted on behalf of defendants Stofsky and Gold and the affidavit of Stephen Barasch, submitted on behalf of defendants Hoff and Lageoles, extensively discuss the portion of Judge Bauman's opinion beginning on page 6 and ending on page 20 concerning alleged misconduct "prior to and during the trial", that discussion is absolutely irrelevant to defendants' present motions, because there is not even any suggestion by defendants in their most recent papers of misconduct by the Government "prior to and during the trial". The only discussion in defendants' papers concerning the portion of Judge Bauman's opinion dealing with alleged Government misconduct after the trial appears in the footnote at pages 8-9 of the memorandum submitted on behalf of defendants Stofsky and Gold. While the argument in that footnote is not very clear to me, it seems to say that a "penalty" should be applied by the Court here to prevent the Government from failing to disclose allegedly exculpatory material discovered after

VTF,Jr.:JCS:ka
73-0753

Honorable Lawrence W. Pierce

November 15, 1974

the trial "until appeals are rejected and exhausted" and "the defendants incarcerated and nearing the end of their terms".

The Government's conduct here certainly does not support this call for development of a "penalty". The Government, on its own initiative, commenced an investigation of Mr. Glasser's finances covering a much broader period of time than defendants considered relevant; the Government continued to press this investigation after the Court denied defendants' earlier motions; the Government, sua sponte, made available to defendants all of the materials it had gathered prior to the argument of any appeal and prior to any incarceration of defendants; and the Government entered into a stipulation with defendants staying the appeals until after this Court could consider any further motions defendants desired to make based on the additional materials. Indeed, Judge Bauman's treatment of the post-trial suppression issues in Rosner is applicable here a fortiori. The information defendants here rely upon in their most recent new trial papers and which they claim the Government unlawfully suppressed, was provided to them by the Government, sua sponte, and not by some third party as in Rosner. We respectfully submit that to apply a "penalty" to the Government's conduct here is to tell the prosecutor that he will be chastised, not commended, for a continuing search for truth -- a result at odds with basic principles of our system of criminal justice.

VTF, Jr.:JCS:ka
73-0753

Honorable Lawrence W. Pierce

November 15, 1974

With regard to defendants' failure to subpoena any financial records of Mr. Glasser for periods prior to January 1, 1967, Mr. Abramowitz's latest affidavit states at page 5 that "we can hardly be expected to subpoena documents which, to the best of our knowledge, would have been totally irrelevant to the issues in the case." Mr. Abramowitz reached his prior conclusion that financial records for earlier periods were "totally irrelevant" with knowledge (a) that the deposits as of January 1, 1967, in Mr. Glasser's account at the Emigrant Savings Bank totalled \$44,546.88; (b) that the deposits as of January 1, 1967, in Mr. Glasser's account at The Greenwich Savings Bank totalled \$20,762.76; (c) that Mr. Glasser was making substantial cash deposits in his accounts shortly after January 1, 1967; and (d) that the probate records of Mrs. Glasser's parents' estates, admitted at trial, contradicted Mr. Glasser's trial testimony that the bulk of the \$120,000 in savings accounts had been deposited some 30 years ago. It is difficult to understand how the additional materials made available by the Government could have led Mr. Abramowitz to change his prior conclusion that deposits by Mr. Glasser prior to January 1, 1967, were "totally irrelevant" to the issues in the case.

Finally, with regard to the Schwartzbaum proceeding, in light of the affidavits submitted by defendant, there is now no factual dispute that prior to the Stofsky trial, Mr. Abramowitz told Schwartzbaum's trial counsel, William Esbitt, that he had obtained bank records showing substantial cash deposits by Mr. Glasser: Mr. Abramowitz has sworn that he made such a statement to Mr. Esbitt; Mr. Esbitt has not denied that Mr. Abramowitz made such a statement to him; Mr. Esbitt only swears that he has "no recollection" of the statement. There is then,

VTW,Jr.:JCS:ka
73-0753

Honorable Lawrence W. Pierce

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an additional basis for the Court's earlier finding that Schwartzbaum has not satisfied the threshold requirement that the purported newly discovered evidence could not have been with due diligence discovered either before the trial or at the latest at the trial.

Respectfully yours,

PAUL J. CURRAN
United States Attorney

By:

JOHN C. SABETTA
Assistant United States Attorney
Telephone: (212) 791-1920

Enclosures

cc: w/encls.

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VIV, Jr. :JCS:ka
73-0733

Honorable Lawrence W. Pierce

November 15, 1974

cc: w/encls. (cont'd)

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A 274

AFFIDAVIT OF ROBERT R. MARONCELLI
(November 15, 1974)

Item
-0753UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

CHARLES FORTINI, CHARLES POGI,
ALFRED R. MARONCELLI, AGENT,
Defendants.

UNITED STATES OF AMERICA

CARL "BOB" SCHWARTZBAUM,

Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.
SOUTHERN DISTRICT OF NEW YORK)

ROBERT R. MARONCELLI, being duly sworn, deposes and says:

1. I am a Revenue Agent, Audit Division, of the United States Internal Revenue Service ("IRS"), and I make this affidavit at the request of Assistant United States Attorney John C. Saccetta. I have been employed by IRS in various capacities for approximately 20 years.

2. In the course of my official duties during the first part of 1972, and for the principal purpose of determining the merits of any additional or liability, I began to conduct detailed audits of the 1959, 1970, and 1971 federal income tax returns of defendant Al Gold and his wife, and the joint tax returns of

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and 1970 returns of defendant Charles Hoff and his wife. Tingle reviewed the documents attached as Exhibit "A" to the affidavit of Elkan Abramovitz, Esq., sworn to on September 11, 1971 and admitted in these proceedings, and found no copies of documents which would conflict with the above-mentioned audits.

3. Those audits were conducted entirely by me without the participation of the Intelligence Division or FBI. No net worth analysis was attempted or employed. The financial adjustments occasioned by each of the said audits was determined by my review of records of the financial institutions, accounts and transactions whose existence and identities were already disclosed by the returns of the defendant being utilized or made available to me by his accountant-representative.

4. At no time did I or, to my knowledge, any other FBI agent survey or canvass: (a) any financial institution, as for example, savings and commercial banks, brokerage firms, insurance companies and stock transfer agents, in order to determine the existence of accounts, safe deposit boxes or transactions in the name, or for the benefit, of any defendant herein, other than those institutions, accounts and transactions previously identified by the defendant or his accountant-representative; (b) the records of various county clerks for evidence of real property transfers; (c) zoning records of Boston, Massachusetts, for evidence of large purchases; or (d) gift and

W.S.C.M.
73-0730

records for evidence of substantial gifts. Further,
neither I nor, so my knowledge, any other IRS agent in
connection with this matter undertook to audit the income
tax returns of any of the defendants personally
prior to 1969.

5. In connection with the instant criminal
prosecution for income tax evasion of individuals, Harry
Groffsky, Charles Hoff and Al Gold, I assisted in computing
the taxable income each of those defendants should have
reported on his returns and the amount of tax due thereon,
as set forth in Counts 25-27 and 31-33 of Indictment
73 Cr. 614.

6. In making those computations for purposes
of the criminal prosecution, I simply added up the payoffs
allegedly received by the particular defendant for the
year in question, as set forth in the testimony of the
several grand jury witnesses, added that sum to the figure
for taxable income already reported on that defendant's
return, left unchanged that defendant's claimed deductions
and exemptions and calculated the tax due.

RF-A-107

ROBERT R. TAYLOR, ESQ.

Sworn to before me this

11th day of November, 1974.

Robert R. Taylor

U.S. Attorney's Office
United States Courthouse
Columbus, Ohio 43215

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ENDORSEMENT ORDER DENYING
MOTION FOR NEW TRIAL
(June 5, 1975)

A 279

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

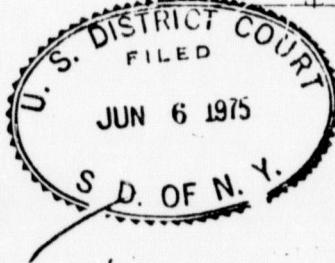
-----x UNITED STATES OF AMERICA

- v -

: 73 Cr. 616

KARL SCHWARTZBAUM,

Defendant.



ENDORSEMENT ORDER

Based on additional newly-discovered evidence concerning the personal finances of Jack Glasser, the government's principal witness, the defendant herein has renewed his motion for a new trial.

It is argued that the number of newly-discovered bank deposits indicates that numerous manufacturers were involved in the pay-off scheme rather than merely the six as claimed at trial and that therefore it would be quite unlikely that Glasser could have recalled the substance of the conversations he had with the defendant. Thus it is urged that if this evidence had been known by defendant at the time of trial, Glasser's testimony

that he had received payments from the defendant would have been severely undermined. This contention, however, overlooks the fact that there was strong corroborative evidence that the defendant had, in fact, made these payments. A government witness testified that the defendant had admitted to having made the payments. Given this, it is difficult to see how evidence that the scheme involved more manufacturers than originally believed would so shatter Glasser's credibility as to produce an acquittal at the trial or at a retrial. It is also alleged that the bank deposits constitute "solid evidence" that Glasser did not share any of the funds received with union officials and therefore no crime was committed. In this Court's judgment these deposits do not at all indicate that no union officials were involved in the scheme. Rather, given the small size of the industry and the added fact that the contract requirements created financial hardships which the manufacturers endeavored to avoid, it would be more reasonable to conclude that a pay-off scheme, involving ^{key} persons in the arrangement, [redacted] union

Wif

representatives, was not only in existence but was more widespread and far reaching than originally supposed.

The motion for a new trial is denied.

The alternative request for a hearing is also denied since the Court perceives no useful purpose to be attained thereby. The evidence adduced to support the central allegation concerning Glasser's finances is wholly documentary and has been made available to the defendant. The government's actions in connection with Glasser have been detailed. Finally, disclosure of the names of the other manufacturers purportedly involved in the scheme would not serve the public interest.

The motion for a new trial and the alternative application for a hearing are denied.

SO ORDERED.

Dated: New York, New York
June 5, 1975

Lawrence W. Pierce
LAWRENCE W. PIERCE
U. S. D. J.

A 282

MEMORANDUM OPINION DENYING MOTION FOR
NEW TRIAL IN UNITED STATES V. GEORGE
STOFSKY, ET AL. (June 4, 1975)

A-283-

UNITED STATES DISTRICT COURT

CLYDE GUNNISON, et al.,

Defendants.

: 73 Cr. 14

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Attorney for Defendants Hoff and Lageoles

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United States Attorney
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By: JOHN C. SABETTA
V. THOMAS FRIMAN, JR.
Assistant United States Attorneys

Attorneys for United States of America

U.S. ATTORNEY, D.D.C.

REMANENT CRIMINAL

Following jury verdicts of guilty on February 21, 1974 of various counts in an indictment the defendants appealed on April 21, 1974 for a new trial based on newly-discovered evidence concerning the personal finances of the government's chief witness, Jack Glasser. More precisely, it was alleged that it had been discovered that during the years 1967 through 1970 Glasser and his wife had deposited over \$57,000 in a series of frequent cash transactions in three separate New York banks. The defendants argued that this evidence demonstrated that Jack Glasser had committed perjury during the trial. Moreover, this was said to bolster the defense theory that while it appeared that Glasser had indeed accepted payments from various manufacturers no portion of these payments had in fact been turned over to the defendants. Rejecting the suggestion of prosecutorial misconduct, this Court held that the new evidence--the key to which was in defense counsel's hands during the trial--was insufficient to support the conclusion that a new trial had to be granted.

Based on additional information, also concerning Mr. Glasser's finances, the defendants have again moved for

new trial. It appears that the Glashers' demands for a
various checking and savings accounts exceeded the amounts
previously disclosed during the first motion for a new
trial. The defendants also urge that a finding of governmental
misconduct be made since it appears that at least
sections of this additional information were in the govern-
ment's possession while the first new trial motion was being
considered and that, on these grounds, a new trial be granted.

The Charge of Governmental Suppression

There is no question but that while the first
new trial motion was sub judice the government had in its
possession material which arguably was pertinent to the
disposition of that motion. Indeed the government has
acknowledged that at least some of these records had some
"conceivable . . . significance." Affidavit in Opposition,
34 at 3. Nevertheless, the government unilaterally decided
not to make a "piecemeal" disclosure of any of this material.
While there has been no showing that the course adopted
here was not taken in good faith--in fact, the opposite
appears to be the case--the Court thinks that such a course
clearly was highly inappropriate and that the failure to
disclose the records--no matter how incomplete--constituted
an error in judgment. See United States v. Rosner, Slip Op.

With regard to the motion to quash with the evidentiary material disclosed to the defendants prior to the government's deliberation and prior to disclosure to the court, the appellate process disengaged and at the time of the application for the writ after the application of a standard different from that used in ruling on the defendant's motion for a new trial. The issue, rather, is whether there was any prejudice to the defendants. United States v. Rosner, 72 Cr. 732, Slip Op. at 23 (S.D.N.Y. Aug. 15, 1974).

Here the defendants have totally failed even to allege any prejudice. The government sur sponte revealed all the information it had to the defendants and agreed to have the appellate process stayed pending the renewal of the new trial motion before this Court. The defendants have now had an opportunity to fully air all their contentions based on all the evidence available. In short, the Court finds that the government's failure to disclose the material in question, while regrettable, did not prejudice the defendants and accordingly this aspect of the motion is denied.

In short, there is evidence concerning the claim of
financial autonomy. Whereas it appeared at the first trial
and motion that the Glassers had made cash deposits
in identifiable amounts totalling nearly \$16,000 how it appears
that the deposits made, whether in cash or checks, totalled--
as the government concedes--over \$157,000 during the periods
from January 1, 1962 through December 31, 1973. It is clear
that Glasser's testimony at trial concerning the source of
his wealth, that is, that it was derived in the main from
an inheritance left to his wife, was untruthful. As the
Court concluded in its first opinion Glasser "has engaged
in an effort to conceal information, and has given false,
or deliberately misleading testimony with respect to the
source of his savings." United States v. Stofsky, Slip
Op. at 11-12. The material submitted to this Court on this
new trial motion strongly reaffirms this conclusion but
adds nothing substantively different to what was presented
in the first motion for a new trial. In short, it is more
of the same. Whether Glasser had secreted \$58,000 or \$157,000
dollars in his checking and savings accounts as such would
in this Court's view have little significance at a new trial.
Glasser's testimony concerning the source of his savings was

...and during the trial of these defendants, the Court's evidence on this point "would not have had the maximum of its persuading effect," namely,

...that is, if the theory of the defense theory
which maintained all the payments from the manufacturers
to the plaintiff allegation that the amounts of the deposits
demonstrated this fact. However, as the Court pointed out
when it was trying the first motion for a new trial, the size
of the deposits do not at all necessarily establish that
Glosser kept all the payments. A more reasonable and more
convincing explanation would be that the extent of the scheme
involving the defendant was far more widespread than
previously known. Moreover, the defense theory was fully
presented during the trial and apparently rejected by the
jury.

The motion for a new trial is hereby denied for
the reasons stated herein and in this Court's Opinion dated
June 12, 1974.¹⁴

SO ORDERED.

Atkisson: New York, New York
June 4, 1975

LAWRENCE W. PIERCE
U. S. D. J.

RECORDED

The Court held United States v. Ladd, Slip Op., October 21, 1941, 75-242, that the Court of Appeals in 1938, in its opinion, in failing to rule the government had lawfully failed to disclose evidence in its possession during the trial. Here the government discovered and first came into possession of the evidence after the trial. Thus the test used in Ladd is not applicable here.

A 290

ENDORSEMENT ORDER DENYING MOTION
TO DISMISS
(June 4, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

CHARLES WALTER, Plaintiff,
v. PARL INDUSTRIES, INC.,

Defendant.

CHARLES WALTER, Plaintiff,

: 73 Cr. 606

PARL INDUSTRIES, INC.,

defendant.

-----X

DEFENDANT'S COUNTERCLAIM

The defendant herein is denied since it was not made before trial as required by Rule 12(b)(2) of the Federal Rules of Civil Procedure. See United States v. Grissino, 74 Cr. 322, slip op. at 4 (S.D.N.Y. March 25, 1975).

SO ORDERED.

Dated: New York, New York
June 4, 1975

LAWRENCE V. PIERCE
U. S. D. J.

A 292

ENDORSEMENT ORDER DENYING MOTION
TO DISMISS
(June 4, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 293

-----x
UNITED STATES OF AMERICA :

- v - : 73 Cr. 614

GEORGE STOFSKY, CHARLES HOFF,
AL GOLD, and CLIFFORD LAGEOLES, :

Defendants. :

-----x
UNITED STATES OF AMERICA :

- v - :

KARL "JACK" SCHWARTZBAUM, : 73 Cr. 616

Defendant. :

-----x
ENDORSEMENT ORDER

The motion herein is denied. Having considered the circumstances surrounding the signing of the order empanelling the grand jury for April 20, 1971 the Court is persuaded that the order was meant to be premised on 18 U.S.C. §3331. Judge Bonsal's statement to the grand jury when it convened makes this abundantly clear. Defendants' reading of Wax v. Motley, Slip Op. Docket No. 75-3003 (2d Cir. January 21, 1975) is erroneous. That case did not hold that the use of extrinsic evidence to clarify a court order is improper. In fact, in Wax, such extrinsic evidence was used to shed light on an otherwise ambiguous order.

It is true that Vax, unlike this case, involved a nunc pro nunc amendment to an order. However, given Judge Bonsal's statement to the grand jury so shortly after the empanelling order was signed such a distinction is of no importance. It is reasonable to assume that Judge Bonsal before making his remarks undertook to ascertain the factual basis for his assertions.

The argument that the entry of Judge Lasker's order of extension three days after the expiration of the grand jury of itself renders the indictments invalid the Court finds without merit. See Nolan v. United States, 163 F.2d 768 (8th Cir. 1947). Section 3331(a) of Title 18 provides that the "Court may enter an order extending" the term of a special grand jury for an additional six months. The statute does not provide that it is the actual act of entering the order on the criminal docket which triggers the extension and it would be fair to assume that it was presupposed by the drafters of the section that prior to such entry a judge's signature was required. In light of the fact that judges normally have no control over the entry of orders and that in fact this is a ministerial task performed by the clerks of the court, it would appear that

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the critical act signifying approval of the extension is
that of signing the order.

The motion is in all respect denied.

SO ORDERED.

Dated: New York, New York
June 4, 1975

LAWRENCE W. PIERCE
U. S. D. J.

A 296

NOTICE OF APPEAL
(June 15, 1975)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Docket Number _____

-vs.-

KARL SCHWARTZBAUM,

Judge Lawrence W. Pierce

(District Court Judge)

Defendant -Appellant.

NOTICE OF APPEAL

Notice is hereby given that Karl Schwartzbaum appeals to the United States Court of Appeals for the Second Circuit from the Judgment orders other (specify) _____ entered in this action on June 4 and June 5, 1975 (Date)

Date July 15, 1975
To:

Address Goldstein, Shames & Hyde
655 Madison Avenue
New York, New York 10021

EDWARD BRODSKY

(Counsel for Appellant)

Phone Number (212) 838-3700

ADD ADDITIONAL PAGE IF NECESSARY

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ATTORNEY'S signature Edward Brodsky

TRANSCRIPT INFORMATION - FORM B

► TRANSCRIPT ORDER

► DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE)

- Prepare transcript of
 Pre-trial proceedings
 Trial
 Sentence
 Post-trial proceedings **THERE IS NO TRANSCRIPT**

DATE

Jul 15 1975

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